TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~289~~ 141.

CHARLES C. McCHORD, JAMES F. DEMPSEY, AND JOHN C. WOOD, APPELLANTS,

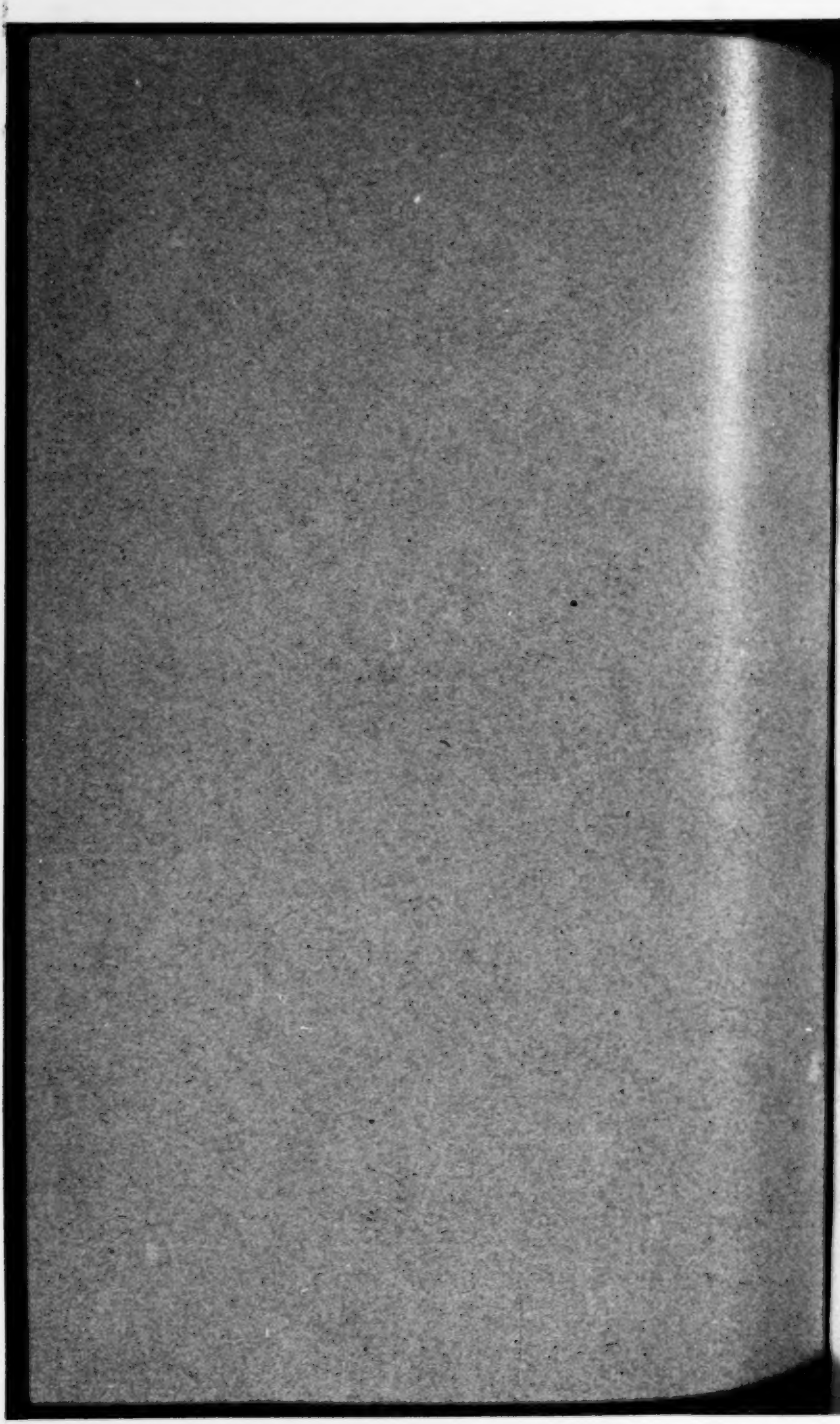
vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED AUGUST 21, 1900.

(17,881.)



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OCTOBER TERM, 1900.

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CHARLES C. McCHORD, JAMES F. DEMPSEY, AND JOHN C. WOOD, APPELLANTS,

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 22, 1900.

1 Proceedings of the circuit court of the United States for the district of Kentucky at a regular term begun and held at the Federal court hall, in the city of Louisville, on Monday, February 19th, A. D. 1900.

Present: Hon. Walter Evans, sitting as circuit judge.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
vs.
C. C. MCCHORD, J. F. DEMPSEY, & JOHN C. WOOD, Defendants. } No. 6814.

Be it remembered that heretofore, to wit, on the 5th day of July, A. D. 1900, came the complainant in the above-entitled cause and filed its bill of complaint herein against the above-named defendants; which said bill of complaint is as follows:

2 In the Circuit Court of the United States, District of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
v.
C. C. MCCHORD, J. F. DEMPSEY, and JOHN C. WOOD.

To the judges of the circuit court of the United States for the district of Kentucky:

The Louisville & Nashville Railroad Company, a corporation organized under and pursuant to the laws of the State of Kentucky and having its principal place of business in the city of Louisville, in said State, brings this its bill against C. C. McChord, of Springfield, Washington county, Kentucky; J. F. Dempsey, of Madisonville, Hopkins county, Kentucky, and John C. Wood, of Mt. Sterling, Montgomery county, Kentucky, all of whom are citizens of the State of Kentucky; and thereupon your orator complains and says that the amount in controversy herein far exceeds the sum and value of ten thousand dollars, exclusive of interest and costs.

I. Your orator was incorporated and organized under an act of the General Assembly of the Commonwealth of Kentucky entitled "An act to charter the Louisville and Nashville Railroad Company," approved March 5, 1850, whereby your orator was authorized to construct and operate a railrood from Louisville, Kentucky, to the Tennesse line in the direction of Nashville, Tennessee. Thereafter the said charter was amended by an act of the General Assembly of the Commonwealth of Kentucky entitled "An act to amend an act entitled An act to charter the Louisville & Nashville Railroad Company, approved March 5, 1850," approved March 20, 1851, and by its said charter as thus amended your orator was authorized to construct and operate a branch of said railroad to the Mississippi river
3 and any other branches your orator might desire. Thereafter the said charter was again amended by an act of the General

Assembly of the Commonwealth of Kentucky entitled "An act to amend the charter of the Louisville & Nashville Railroad Company," approved January 17, 1856, and by its said charter as thus amended your orator was authorized to purchase and hold any railroad constructed by any other company. The said charter was amended by divers other acts of the General Assembly of the Commonwealth of Kentucky not necessary to be here set out.

By virtue of said charter and amendments and upon the faith thereof your orator has constructed and now holds and operates the following railroads within the State of Kentucky:

Main stem, from Louisville to Tennessee State line in the direction of Nashville, about 139.88 miles in length; constructed about 1859.

Memphis line, from Memphis Junction, on said main stem, to the Tennessee State line at Guthrie, about 46.46 miles in length; constructed about 1859.

Knoxville division, from Lebanon Junction, on said main stem, to Tennessee State line at Jellico, about 171.17 miles in length; constructed at different times and completed at Jellico about 1882.

Cumberland Valley division, from Corbin, on said Knoxville division, to the Tennessee and Virginia State lines at Cumberland Gap, about 47.02 miles in length; constructed about 1890.

Shelby cut-off, from Christiansburg, on Lexington branch, hereinafter referred to, to Shelbyville, about 9 miles in length; constructed about 1895.

Any by virtue of said charter and amendments and upon the faith thereof your orator has acquired by purchase and now holds and operates the following railroads within the State of Kentucky:

4 Cincinnati division, from Louisville to Newport, about 113.85 miles in length; acquired about 1881.

Lexington branch, from Lagrange, on said Cincinnati division, to Lexington, a distance of about 66.02 miles; acquired at the same time as said Cincinnati division was acquired.

Kentucky Central division, about 248.30 miles in length; acquired September 26, 1891, and consisting of the following railroads:

A railroad from a point near Livingston, on said Knoxville division, to Covington, and connecting with said Cincinnati division at Milldale, near Covington, about 149.58 miles in length.

A branch railroad diverging at Paris from said railroad between Livingston and Covington and extending to Maysville, about 49.32 miles in length.

Another branch railroad likewise diverging at Paris from said railroad between Livingston and Covington and extending to Lexington, a distance of about 19 miles in length, and there connecting with said Lexington branch.

Another branch railroad extending from Rowland, on said Knoxville division, to a point near Richmond, on said railroad between Livingston and Covington, about 30.40 miles in length, which was originally constructed by your orator as a branch from its Knox-

ville division and then leased to another company until reacquired, as here stated.

Owensboro & Nashville division, from Owensboro to Adairville, about 83.46 miles in length, acquired about 1880, and connecting with said Memphis line at Russellville.

Shelby railroad, from Anchorage, on said Cincinnati division, to Shelbyville, about 19 miles in length; acquired about 1881.

Bardstown branch, from Bardstown Junction, on said main stem, to Bardstown, about 17 miles in length, acquired about 1860.

Springfield branch, from Bardstown to Springfield, about 20 miles in length, acquired about 1889.

Henderson division, consisting of a railroad from Guthrie, on said Memphis line, to Henderson, about 97.76 miles in length, and a branch therefrom, about 16.10 miles in length, from Madisonville, on said Henderson division, to Providence, which were acquired about 1879.

Greenburg branch, from Lebanon, on said Knoxville division, to Greenburg, about 30.90 miles in length, acquired about 1878 by a lease having several years yet to run.

All of said railroad- were constructed or acquired as stated, and all of them have been and are now held and operated by your orator by virtue of au- upon the faith of its said charter and amendments thereto.

The said railroads so described within the State of Kentucky are but parts of through lines of railroad operated by your orator. The said main stem extends from Louisville to Nashville, and your orator's lines of railroad extend from Nashville *auo*thwardly through Tennessee and Alabama, thence through Mississippi and into Louisiana to New Orleans, and into Florida to Pensacola and River Junction. The said Henderson division extends from Nashville, Tennessee, through Guthrie and Henderson, Kentucky, to Evansville, Indiana, where it connects with another line of your orator extending through Indiana and Illinois to St. Louis, Missouri. The said Cincinnati division extends from Newport to Cincinnati, Ohio, and the said Kentucky Central division is operated as a through line from Covington into Cincinnati, Ohio. The said Cumberland Valley division extends through a portion of Tennessee and into Virginia to Big Stone Gap and Norton. The said Memphis line extends from Guthrie southwestwardly to Memphis, Tennessee, and at all terminal points of your orator's railroad and at many other points thereon, both in Kentucky and out of Kentucky, it makes connections with other railroads whereby there can be and is carried on through bills of lading freight between points in Kentucky and all parts of the United States. Your orator's system of railroads, above referred to, of which the said railroads in the State of Kentucky above described are an integral part, is about 3,000 miles in extent and traverses or reaches the States of Missouri, Illinois, Indiana, Ohio, Kentucky, Tennessee, Virginia, Alabama, Mississippi, Louisiana, and Florida, and said system is operated as a whole. Your orator carries a very large traffic over that part of its

lines in the State of Kentucky, both passenger and freight, and both State and interstate, and about 80 per cent. of such traffic passing over its lines in the State of Kentucky is interstate traffic in the strictest sense, and much of the remainder is virtually interstate traffic, the rates upon which have a direct and vital connection with the rates upon interstate traffic and a direct and far-reaching influence upon commerce among the States.

II. By its said charter your orator was authorized to charge for the transportation of persons, merchandise, and property of any kind whatever any sum not exceeding the following rates, to wit: For the transportation not over 20 miles or under 50 miles of all goods, merchandise, or property, not exceeding 3½ mills for each mile per hundred pounds; for all other transportation of freight and property, not exceeding 4 miles for each mile per hundred pounds; for transporting single packages any distance weigh-
7 ing not less than 100 pounds, 25 cents; for transporting live stock, poultry, furniture, feathers, wool, and rags, and other like light bulky articles, weighing not more than 65 pounds to the cubic foot, not exceeding 15 per cent. above the rates allowed to be charged for heavy merchandise. Gold, silver, bullion, money of all kinds, and mails were excepted from the rates established in said charter, and the board of directors was authorized to contract especially therefor. For the transportation of passengers your orator was authorized to charge not exceeding 4 cents per mile for each passenger with his baggage weighing not more than 40 pounds. Said maximum rates hereinabove set out and which by its charter your orator was authorized to charge were set out in part in the 18th section of said charter of March 5, 1850, and in so far as they are not set out in said 18th section of said charter your orator was by said 18th section of said charter authorized to charge the same maximum rates as were authorized to be charged on the railway from Lexington to Frankfort, and the maximum rates authorized to be charged on said railway from Lexington to Frankfort on March 5, 1850, were set out in the 20th section of the act of the General Assembly of the Commonwealth of Kentucky approved February 28, 1848, and entitled "An act to incorporate the Lexington & Frankfort Railroad Company," and the maximum rates provided in the 20th section of said act of February 28, 1848, were in full force and effect upon said railway from Lexington to Frankfort on March 5, 1850.

Your orator says that by reason of the premises there was and is a valid and subsisting contract between the Commonwealth of Ken-
tucky and your orator, whereby your orator is authorized to
8 charge within the State of Kentucky not exceeding the maximum rates hereinabove set out upon the railroads operated by it under its said charter and amendments within the State of Kentucky, and that said railroads were constructed and acquired by your orator upon the faith of said contract.

9 III. Defendants herein are holding and exercising the offices of railroad commissioners of the State of Kentucky, having been duly elected thereto and qualified therefor, and as such

constitute the railroad commission of said State, and as such claim and unless restrained by the orders of this court will exercise the right to fix rates for the transportation of passengers and property over the various lines of your orator's railroad by virtue of an alleged act of the General Assembly of the Commonwealth of Kentucky, which it is claimed became a law on the — day of March, 1900, and took effect on the 12th day of June, 1900, entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, and employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribing the manner of enforcing the provisions of this act and penalties for the violations of its provisions." The said act consists of five sections in the following words, to wit:

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SEC. 1. When complaint shall be made to the railroad commission accusing any railroad company or corporation of charging, collecting or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, or when said commission shall receive information or have reason to believe that such rate or rates are being charged, collected or received, it shall be the duty of said commission, to hear and determine the matter as speedily as possible. They shall give the company or corporation complained of not less than ten days' notice, by letter mailed to an officer or employé of said company or corporation, stating the time and place of the hearing of same; also the nature of the complaint or matter to be investigated, and shall hear such statements, arguments or evidence offered by the parties as the commission may deem relevant; and should the commission determine that the company or corporation is, or has been, guilty of extortion, said commission shall make and fix a just and reasonable rate, toll or compensation which said railroad company or corporation may charge, collect or receive for like services thereafter rendered. The rate, toll or compensation so fixed by the commission shall be entered and be an order on the record book of their office and signed by the commission, and a copy thereof mailed to an officer, agent or employé of the railroad company or corporation affected thereby, and shall be in full force and effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad company or corporation, or any officer, agent, or employee thereof, charge, collect or receive a greater or higher rate, toll, or compensation, for like services thereafter rendered than that made and fixed by said commission, as herein provided, said company or corporation, and said officer, agent or employé, shall each be deemed guilty of extortion, and upon conviction, shall be fined for the first offense in any sum not less than five hundred dollars nor more than one thousand dollars, and upon a second conviction, in any sum not less than one thousand dollars nor more than two thousand dollars, and

for third and succeeding convictions in any sum, not less than two thousand dollars nor more than five thousand dollars.

SEC. 2. The circuit court of any county into or through which the line or lines of road carrying such passenger or freight, owned or operated by said railroad, and the Franklin circuit court, shall have jurisdiction of the offense against the railroad company or corporation offending and the circuit court of the county where such offense may be committed by said officer, agent or employé, shall have jurisdiction in all prosecutions against said officer, agent or employé.

SEC. 3. Prosecutions under this act shall be by indictment.

SEC. 4. All prosecutions under this act shall be commenced within two years after the offense shall have been committed.

SEC. 5. In making said investigation said commission may, when deemed necessary, take the depositions of witnesses before an examiner or notary public, whose fee shall be paid by the State, and upon the certificate of the chairman of the commission, approved by the governor, the auditor shall draw his warrant upon the treasurer for its payment."

11 By said act said railroad commission is authorized and required, when complaint is made or when it receives information or has reason to believe that any railroad company or corporation is charging, collecting, or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, to hear and determine the matter as speedily as possible, and before doing so to mail not less than ten days beforehand a notice to any officer, agent, or employé of said company or corporation—for example, to a brakeman or section hand—stating the time and place of the hearing and the nature of the matter to be investigated.

Said railroad commission is further authorized and required by said act, if upon such investigation made upon such notice it shall determine that said company or corporation is or has been guilty of extortion in the particulars charged, to make and fix, without any notice and without any investigation, what it shall deem to be a just and reasonable rate, toll, or compensation which said company or corporation may thereafter charge, and said rate, toll, or compensation so fixed shall be in full force and effect at the expiration of ten days after the said commission shall have mailed a copy of the order fixing the same to any officer, agent, or employé of the said company or corporation affected thereby—for example, as above stated, such notice may be mailed to a brakeman or section hand—and at all times thereafter said commission may, at any time and without any notice and without any investigation, modify or change the rates thus fixed by it; and if said company or corporation or any of its officers, agents, or employés shall thereafter charge, collect, or receive a greater rate than that made and fixed by said commission, as above stated, said company or corporation and said officers, agents, and employés are each by said act made guilty of extortion and, upon conviction, are each to be fined for the first offense not less than five hundred dollars nor more than one thousand dollars, and upon a second conviction in any sum not less than one thou-

sand dollars nor more than two thousand dollars, and for third and succeeding convictions in any sum not less than two thousand dollars nor more than five thousand dollars.

12 Thus, under said act, said railroad commission is authorized to fix the rates of your orator and all other railroad companies or corporations without any notice and without any investigation from or by it. The rates so fixed are to go into full force and effect simply by the lapse of ten days from the date of the mailing of the copy of the order fixing the same to any officer, agent, or employé of the railroad company or corporation, and unless the railroad company or corporation affected thereby straightway complies with said rate, although such rate may be a palpable invasion of such company's or corporation's constitutional rights, such corporation will be subject to the excessive fines fixed in said act with respect to each shipment passing over its road to which said commission desires said rates so fixed to apply, and every officer, agent, or employé of said company or corporation either charging, collecting, or receiving the rate fixed and charged by said company or corporation for each of such shipments in question, although the said corporation may have full right and power under the Constitution of the United States to charge such rate, will likewise be subjected to said excessive fines.

IV. All of your orator's rates charged, collected, or received within the State of Kentucky are just and reasonable and have not been sufficient for many years to give it a fair return upon the reasonable value of its investment, notwithstanding it has at all times operated its property with the strictest economy and in the most skillful manner. All of its said rates are very much less than the rates which your orator has the right to charge by its contract with the Commonwealth of Kentucky hereinabove set out. In addition to complying with this contract with the State of Kentucky in the matter of rates fixed and charged, and in addition to fixing and charging said rates subject to and in conformity with the requirements of law applicable to all common carriers that their rates shall be just and reasonable, your orator is subject to and complies with all the requirements of the laws

13 of the State of Kentucky prohibiting unjust discrimination between individuals or localities in the matters of rates, which laws do not apply to all common carriers, but are unreasonably restricted, so as to apply merely to corporations which operate railroads, and, in addition to complying with its agreement with the State of Kentucky and with all the provisions of the law, your orator is forced to and does recognize the requirements of competition which constantly tend to reduce rates and which affect not merely rates to or from points known as competitive points, but in a greater or less degree all rates between all points, so as to prevent any rates becoming or remaining unreasonably high; yet notwithstanding the premises it was and is the purpose of the said act last above referred to to reduce the rates of your orator and other railroad companies in the State of Kentucky, and your orator believes and avers that the said act will have said effect and no other. Your orator

submits, therefore, that the necessary effect of said act will be to impair the obligation of said contract between your orator and the Commonwealth of Kentucky, to the great and irreparable injury of your orator, and the said act is therefore, as to your orator, null and void because in contravention of paragraph 1 of section 10 of article 1 of the Constitution of the United States, but your orator believes and avers that unless restrained by the order of this court the said defendants will proceed under said act, though the same is null and void, to reduce the said rates, and thereby violate the said contract rights, to your orator's irreparable injury, and your orator and its agents, servants, and employés will on that account, as will hereinafter be more fully set out, be subjected to a multiplicity of prosecutions and actions.

14 V. It is the duty of said railroad commission, composed, as aforesaid, of the defendants herein, to see that the laws relating to all railroads, except street, are faithfully executed, and to exercise a general supervision over the railroads of the State. To this end they are authorized and required to inquire into the management of affairs of railroad companies; to inspect and examine their tracks, bridges, tunnels, and other structures; to supervise facilities at stations, and in many other ways to exercise administrative functions with respect to the railroads of said State. The constitution of said State divides the powers of its government into three distinct departments, each to be confined to a separate body of magistracy—those which are legislative to one, those which are executive to another, and those which are judicial to another—and declares that no person or collection of persons being of one of those departments shall exercise any power properly belonging to either of the others, except in the instances expressly directed and permitted in said constitution. By said constitution the judicial power of said State is vested in the senate, when sitting as a court of impeachment, and one supreme court, to be styled the court of appeals, and the courts established by said constitution, to wit, circuit courts, quarterly courts, county courts, justices' courts, police courts, and fiscal courts. The said railroad commission is not established as a court by said constitution and is not expressly directed or permitted by said constitution to exercise any judicial powers; on the contrary, its powers are essentially and purely of an administrative character, and it essentially belongs to the executive department of the State government. The laws of said State not only fail to confer upon it judicial functions or powers, but prohibit the conferring of any such powers upon it, and by reason of the administrative functions with respect to the conduct and regulation of railroads which said commission is required and authorized to perform it is rendered essentially unfit to exercise judicial functions.

15 VI. While all other common carriers, whether operating railroads or not, are subject only to the requirement that their rates are just and reasonable, and in case of controversy are entitled to have the judgment of the courts upon that question, the said act hereinbefore referred to singles out railroad corporations and denies them the equal protection of the laws

applying to all other common carriers, and deprives said railroad corporations of any opportunity to have a judicial determination of the reasonableness of their rates when the same are called in question, and substitutes therefor the determination of said railroad commission, which is not and cannot be a court and which does not afford and cannot afford a judicial hearing or determination of questions brought before it; and whereas all other common carriers in the event of a judicial determination by a court of competent jurisdiction that their rates are unreasonable are bound to refund only the excess of such rates over what are just and reasonable rates, and no other penalty or consequence attaches to such judicial determination, yet railroad corporations are to be subjected, in the absence of any judicial determination as to whether their rates are reasonable or otherwise, and simply upon the determination of said non-judicial tribunal, the railroad commission, that such rates are unreasonable, to the penalty of having the power to make their rates taken out of their hands and vested exclusively in said railroad commission, which commission is then without any hearing, judicial or otherwise, to fix such rates as it may choose, and is thereafter without any notice and without any hearing, judicial or otherwise, to have the right at its pleasure to modify the rates so fixed by it, and if said railroad corporations fail to charge the rates thus fixed for them by this unjust and unconstitutional procedure they will be subjected for every shipment passing over their lines to which said railroad commission may desire said rates so fixed by it to apply to the prosecutions, fines, and penalties imposed in said act.

16 VII. Your orator submits that under the Constitution of the United States, and independently of the aforesaid contract with the State of Kentucky, it is entitled to charge reasonable rates for the use of its property, and that it cannot be compelled to charge rates fixed by the railroad commission of Kentucky in the absence of a judicial investigation and determination that the rates so fixed are just and reasonable; that the said act makes no provision for any investigation or determination even by the railroad commission that the rates fixed by it are just and reasonable, and the said commission may fix such rates without any notice to the railroad corporations to which said act applies as to what said commission proposes to do and without any investigation of the questions involved, and may thereafter change or modify said rates without any notize or investigation; but that even if said commission should choose to give notice and investigate such questions, such investigation and resulting determination would not satisfy your orator's constitutional rights to a judicial determination, because said commission is not a court, nor is it clothed with judicial functions, but, on the contrary, it is an administrative tribunal, which, under the law, cannot exercise judicial functions, and which, by reason of the functions it does exercise, is in its nature incapable of affording the judicial investigation to which your orator is entitled, and by said act your orator is denied the privilege and right to have it judicially determined by a court of competent juris-

diction whether the rates fixed and charged by it are just and reasonable, and whether the rates fixed by said commission amount to a confiscation and spoilation of its property. If, therefore, defendants be permitted to proceed under said act, your orator will be compelled to charge the rates fixed by them without any opportunity for a judicial investigation and determination as to their reasonableness, and it will thus be deprived of the lawful use of its property and in substance and effect of its property itself without due process of law, and will also be denied the equal protection of the laws, in violation of section 1 of article 14 of the amendments to the Constitution of the United States.

17 VIII. Your orator further says that the said act of March, 1900, relates to all freight and passenger rates charged, collected, or received by railroad companies in the Commonwealth of Kentucky, and is not restricted to rates actually charged, collected, and received, within the Commonwealth of Kentucky, for transportation commencing and ending within the said State, and therefore by its terms is an express and direct interference with and regulation of commerce among the States, and therefore the said act is in conflict with paragraph 3 of section 8 of article 1 of the Constitution of the United States, which gives to the Congress of the United States exclusive power to regulate commerce among the States, and which power has been exercised by Congress by an act of February 4, 1887, entitled "An act to regulate commerce among the States," and by the acts amendatory thereof, and that said act of March, 1900, is therefore null and void.

IX. Defendants have called for and obtained from your orator a list of rates fixed and charged by it for transportation of freight and passengers over its railroads in the State of Kentucky for the purpose of considering whether or not they shall be altered and reduced in accordance with the terms of said act, and are giving it out in speeches and interviews that they intend to proceed at once under said act, and, unless restrained by the order of this court, defendants will proceed at once to hear and determine complaints under said act, although the same is in contravention of the Constitution of the United States in all the particulars hereinabove set out, and is therefore null and void, and will proceed thereupon to reduce your orator's rates to such as they think your orator should charge, and will thereafter at pleasure modify and still further reduce the rates so fixed, and if your orator does not observe the rates so fixed, no matter how unjustly and unreasonably low, your orator will be subjected to innumerable prosecutions throughout the State of Kentucky for failing to comply with such rates fixed in this unconstitutional manner, and it will be subjected to innumerable suits by consignors and consignees, who will claim the right

18 to ship at said rates so unconstitutionally fixed and to sue for any excess they may be charged over said rates, though rightfully charged, and at the same time all your orator's officers and agents and servants, though perfectly innocent of any offense and though merely assisting your orator to maintain its constitutional rights, will be indicted, prosecuted, and heavily fined, to the

great demoralization of the public service which your orator is bound to render, and so it is, unless said defendants are restrained by the order of this court from proceeding under said act, your orator's contract rights will be impaired, it will be deprived of its property without due process of law, denied the equal protection of the law, and subjected to great, irreparable wrong and injury and to a vast multiplicity of prosecutions and actions in the courts of said State.

Forasmuch as your orator can have no adequate relief except in this court, and to the end that the defendant- may, if they can, show why your orator shall not have the relief herein prayed, and that they answer this bill according to the course and practice of the court, but not under oath, the answer of each of them under oath being hereby expressly waived, your orator prays that said act of March, 1900, be decreed and be declared to be in contravention of the Constitution of the United States, and therefore null and void, and that until the further order of the court said defendants be enjoined from taking any action whatever against or in relation to complainant under said act; that said injunction may be perpetual upon final hearing, and as irreparable injury to your orator may ensue if defendants should take any action against or in relation to your orator under said act before the motion for a preliminary injunction can be heard, your orator prays that an order be granted restraining defendants from doing the acts herein sought to be enjoined, and your orator prays for such other and further relief as in equity it may be entitled to, and further prays that your honors also grant unto your orator a writ of subpœna of the United States of America, directed to the said C. C. McChord,
19 J. F. Dempsey, and John C. Wood commanding them on a day certain to appear and answer this bill and to abide and perform such order and decree as to your honors shall seem meet and equitable; and your orator will ever pray, etc.

HELM, BRUCE & HELM,
WALKER D. HINES,
Solicitors for Complainant.

THE UNITED STATES OF AMERICA, *District of Kentucky*, } *ss:*

M. H. Smith, being duly sworn, states that he is president of The Louisville & Nashville Railroad Company, the complainant above named; that he has read the foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

M. H. SMITH.

Subscribed and sworn to before me by M. H. Smith, this 5th day of July, 1900. My commission expires January 8th, 1902.

G. W. B. OLMSTEAD,
[SEAL.] *Notary Public, Jefferson Co., Ky.*

20 Upon which bill the following process issued:

The President of the United States of America to Charles C. McChord, James F. Dempsey, and John C. Wood, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America for the district of Kentucky, at the Federal court hall, in the city of Louisville, on the first Monday in August next, to answer a bill in equity exhibited against you in our said court by Louisville & Nashville Railroad Company, which you shall in nowise omit under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of our said circuit court, hereto affixed at the clerk's office of said court, in Louisville, this 5 day of July, A. D. 1900, and in the 125 year of our Independence.

Attest:

THOS. SPEED,
C. C. C., K. D.,
By HENRY F. CASSIN,
His Deputy.

MEMORANDUM.—The defendants are to enter their appearance in the suit in the clerk's office on or before the 6th day of August next, the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN,
His Deputy.

Upon which the marshal made the following returns:

Came to hand July the 6th, 1900.

A. D. JAMES, *U. S. Marshal,*
By LAURENCE YONTS,
Deputy U. S. Marshal for the District of Kentucky.

Executed on James F. Dempsey by delivering to him a copy hereof this July the 9th, 1900.

A. D. JAMES,
U. S. Marshal,
By LAURENCE YONTS,
Deputy U. S. Marshal for the District of Kentucky.

21 Executed the within on Charles C. McChord, at his residence, in Springfield, Ky., by delivering to him a true copy of this spa. in ch'y this July 23, 1900.

A. D. JAMES, *U. S. Marshal,*
By G. C. THOMPSON, *D. U. S. M.*

Received the within spa. in ch'y, at Frankfort, Kentucky, this 12 day of July, A. D. 1900.

Executed this 13th day of July, 1900, at Mt. Sterling, Kentucky,

by delivering a true copy of the within spa. in ch'y to John C. Wood.

A. D. JAMES,
U. S. Marshal,
By C. McCARTY, *D. M.*

22 Circuit Court of the United States, Sixth Circuit, District of Kentucky.

JULY 9TH, 1900.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
vs.
C. C. McCHORD, &c., Defendants.

This day came the complainant, by Helm, Bruce & Helm and Walker D. Hines, and produced herein notices, duly served upon the defendants, that the complainant would upon this day enter the motion for an interlocutory injunction in the terms of the prayer of its bill of complaint herein.

And thereupon came the defendants, by the Honorable Robert J. Breckinridge, attorney general of Kentucky, but not waiving any objections to the jurisdiction of the court or other objections to the maintenance or conduct of this suit, but expressly reserving the same; and the complainant thereupon moved the court to grant to it an interlocutory injunction in accordance with the terms of the prayer of its bill of complaint herein; to which the defendants objected.

And thereupon, by consent, the said motion is assigned to the 13th day of July, 1900, at ten o'clock a. m., for hearing, it being agreed and so ordered that in the meantime the *status quo* shall be preserved and no effort made by the defendants to enforce the terms of the act of the legislature set out in the bill of complaint, and commonly known as the McChord law, against this complainant.

The notice above referred to is as follows:

23 Circuit Court of the United States in and for the District of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
vs.
CHARLES C. McCHORD, JAMES DEMPSEY, JOHN C. WOOD, Defendants.
} Notice.

GENTLEMEN: You are hereby notified that on Monday, July 9, 1900, at or about the hour of ten a. m., the complainant in the above-entitled cause will, before the United States circuit court, sitting at Louisville, Kentucky, move the court for a temporary injunction in accordance with the prayer of its bill of complaint herein this day filed, and a copy of which bill of complaint accom-

panies this notice and is to be served upon Charles C. McChord, the chairman of the railroad commission of Kentucky.

July 5th, 1900.

Respectfully,

HELM, BRUCE & HELM,
WALKER D. HINES,
For Compl't.

To Hon. Charles C. McChord, Hon. James F. Dempsey, Hon. John C. Wood.

Filed July 9th, 1900.

THOS. SPEED, *Clerk.*

24 In the Circuit Court of the United States, District of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainants,
v.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

E. C. Turner, being duly sworn, states that he served the foregoing notice and the bill of complaint therein referred to upon the therein-named Charles C. McChord on the 5th day of July, 1900, by delivering to the said Charles C. McChord, at Springfield, Ky., at 7.45 p. m., on said date, a copy of the said notice and a copy of the said bill of complaint, and that he served the said notice upon the therein-named James F. Dempsey on July 6, 1900, by delivering to him a copy of the said notice at Louisville, Ky., at 9.50 a. m. on said date.

And Thos. B. Harrison, Jr., being duly sworn, states that he served the foregoing notice upon the therein-named John C. Wood on July 5th, 1900, by delivering a copy of said notice to said John C. Wood, at Mt. Sterling, Ky., at 9.45 p. m. on said date.

E. C. TURNER.
THOS. B. HARRISON, JR.

Subscribed and sworn to before me by E. C. Turner and Thos. B. Harrison, Jr., respectively, this 6th day of July, 1900. My commission expires January 8, 1903.

G. W. B. OLMSTEAD,
Notary Public, Jefferson Co., Ky.

25 And on the 13th day of July, 1900, came the complainant, by Helm, Bruce & Helm and Walker D. Hines, for its counsel. Came also the defendants, by Louis McQuown and D. W. Baird, their counsel, and filed their demurrer to the bill of complaint herein.

The complainant's motion heretofore entered herein for an interlocutory injunction coming on to be heard and having been argued by counsel, and the court, not being advised, takes time.

The demurrer above referred to is as follows:

26 Circuit Court of the United States in and for the District of Kentucky.

LOUISVILLE & NASHVILLE RAILroad Company, Complain-t, *vs.* CHARLES C. McCHORD, JAMES F. Dempsey, and John Wood, Defendants.	The Demurrer of Charles C. McChord, James F. Dempsey, and John C. Wood.

These defendants, Charles C. McChord, James F. Dempsey, and John C. Wood, jointly and severally, not confessing all nor any of the matters in the bill of complaint contained to be true as therein set forth, do demur to said bill for that the same does not state such a case nor contain any matter of equity entitling the complainant to any relief against these defendants or any of them; that this court is without jurisdiction to proceed, hear, or determine the matters set forth in said bill; that the complainant has a full and adequate remedy at law.

Wherefore they pray the judgment of the court whether they shall be compelled to further answer said bill, and further pray to be dismissed with their costs.

ROB'T J. BRECKINRIDGE, JR.
D. W. *DAIRD.*
AARON KOHN.
ZACK PHELPS.
LOUIS McQUOWN.

I, Louis McQuown, of counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is, in my opinion, well founded in law.

LOUIS McQUOWN.

UNITED STATES OF AMERICA, }
District of Kentucky. }

I, Charles C. McChord, one of the defendants in the above cause, being duly sworn, do says that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

CHAS. C. McCHORD.

Subscribed and sworn to before me by Charles C. McChord this 13th day of July, 1900.

My com. expires Jan. 13, 1904.

DAVID W. BAIRD,
N. P., J. C., Ky.

27 And on the 16th day of July, 1900, came again the complainant, The Louisville & Nashville Railroad Company, by Walker D. Hines and Helm Bruce, counsel, and came also the defendants herein, by Louis McQuown and D. W. Baird, counsel, and the court, being advised of the motion heretofore entered herein to grant to the complainant an interlocutory injunction in accordance with the terms of the prayer of the bill of complaint

herein, delivered an opinion in writing, which is filed and ordered to be made a part of the record, and in consideration thereof it is adjudged, ordered, and decreed as follows: That the defendants, C. C. McChord, J. F. Dempsey, and John C. Wood, be, and they are hereby, enjoined and restrained until the further order of the court herein from entertaining any complaint against complainant, or giving any notice of or conducting any hearing against complainant, or fixing any rate, toll, or compensation which the complainant may charge, collect, or receive, or from entering any such rate, toll, or compensation on the record book of their office, or signing the same or mailing any copy thereof to any officer, agent, or employé of the complainant, or from taking any action whatever against or in relation to complainant under said act of March 10th, 1900, entitled "An act to prevent railroad companies or corporations ow-ing and operating a line or lines of railroad and its officers, agents, and employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribing the manner of enforcing the provisions of this act and penalties for the violation of its provisions," approved on the 10th day of March, 1900.

This order shall take effect upon the complainant's execution of a bond, with good security, to be approved by the clerk, in the penal sum of $1,000, to indemnify the defendants herein against all loss that may result from the issue of the injunction hereby ordered.

The opinion above referred to is as follows:

28 *Opinion.*

United States Circuit Court, District of Kentucky.

L. & N. R. R. Co.
vs.
C. C. McChord et al.

L., H. & St. L. R'y
vs.
The Same.

C. & O. R'y Co.
vs.
The Same.

Southern R'y Co.
vs.
The Same.

These actions have for a common object the prevention of the threatened enforcement of an act of the General Assembly of this State which became a law on the 10th day of March, 1900, and if constitutional became effective ninety days thereafter. Including its title, *and* act is as follows:

"An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, and employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribing the manner of enforcing the provisions of this act and penalties for the violation of its provisions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. When complaint shall be made to the railroad commission ac-using any railroad company or corporation of charging, collecting or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, or when said commission shall receive information or have reason to believe that such rate or rates are being charged, collected or received,
29 it shall be the duty of said commission to hear and determine the matter as speedily as possible. They shall give the company or corporation complained of not less than ten days' notice, by letter mailed to an officer or employé of said company or corporation, stating the time and place of the hearing of same; also the nature of the complaint or matter to be investigated, and shall hear such statements, arguments or evidence offered by the parties as the commission may deem relevant; and should the commission determine that the company or corporation is, or has been, guilty of extortion, said commission shall make and fix a just and reasonable rate, toll or compensation, which said railroad company or corporation may charge, collect, or receive for like services thereafter rendered. The rate, tolls or compensation so fixed by the commission shall be entered and be an order on the record book of their office and signed by the commission, and a copy thereof mailed to an officer, agent, or employé of the railroad company or corporation affected thereby, and shall be in full force and effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad company or corporation, or any officer, agent or employé thereof, charge, col-ect or receive a greater or higher rate, toll or compensation, for like services thereafter rendered than that made and fixed by said commission, as herein provided, said company or corporation and said officer, agent or employé, shall each be deemed guilty of extortion, and upon conviction, shall be fined for the first offense in any sum not less than five hundred dollars nor more than one thousand dollars, and upon a second conviction, in any sum not less than one thousand dollars, nor more than two thousand dollars, and for the third and succeeding convictions, in any sum not less than two thousand dollars, nor more than five thousand dollars.

SEC. 2. The circuit court of any county into or through which the line or lines of road carrying such passenger or freight, owned or operated by said railroad, and the Franklin circuit court, shall have jurisdiction of the offense against the railroad company or

corporation offending, and the circuit court of the county where such offense may be committed by said officer, agent or em-
30 ployé, shall have jurisdiction in all prosecutions against said officer, agent or employé.

SEC. 3. Prosecutions under this act shall be by indictment.

SEC. 4. All prosecutions under this act shall be commenced within two years after the offense shall have been committed.

SEC. 5. In making said investigation said commission may, when deemed necessary, take the depositions of witnesses before an examiner or notary public, whose fee shall be paid by the State, and upon the certificate of the chairman of the commission, approved by the governor, the auditor shall draw his warrant upon the treasurer for its payment."

The complainants severally seek the order of this court enjoining and restraining the defendants, who compose the railroad commission of the State, from carrying into effect any of the provisions of the act upon the ground that it violates the Constitution of the United States, first, in authorizing the commission to fix rates at certain instances upon interstate commerce; second, in authorizing the commission to deprive them of their property without due process of law; third in authorizing the commission to take from them the equal protection of the law; fourth, in authorizing the commission to take their property for public use without just compensation; fifth, in authorizing all of these things to be done by a body of executive officers who are not a court and who are without judicial powers, and, sixth, as to the Louisville & Nashville Railroad Co., by authorizing the defendants to fix rates different from those established by the unrepealable charter provisions of that company, thereby impairing the obligations of its contract with the State of Kentucky.

When the act is closely analyzed it is found to provide, first, that either when complaint shall be made to the railroad commission accusing any railroad or corporation of charging, collecting, or receiving extortionate freight or passenger rates over its line of railroad in this State or when that commission shall receive information or have reason to believe that such rates are being charged, collected, or received it shall be, second, its duty to "hear and de-
31 termine" the matter as speedily as possible; third, the company complained of shall be given not less than ten days' notice by letter mailed to an officer or employé of such company, stating the nature of the complant or matter to be investigated and the time and place of hearing it; fourth, the commission shall hear such statements, arguments, or evidence offered by the parties as the commission may deem relevant and may take the depositions of witnesses; fifth, should the commission determine that the company is or has been guilty of extortion, it shall fix a just and reasonable rate of toll or compensation which said company may charge, collect, or receive for like services thereafter rendered; sixth, the rate so fixed shall be entered in its order book and a copy mailed to an officer, agent, or employé of the railroad company affected

thereby, and after ten days thereafter shall be in full force until changed by the commission on the record; seventh, should any such railroad, its officer, agent, or employé, thereafter charge, collect, or receive a greater rate of compensation for like services than those thus fixed for it by the commission, such railroad, its agent or employé, shall be guilty of extortion, and shall be fined as provided in the act, and, eighth, of the offense of extortion as thus defined the various circuit courts of the State shall have jurisdiction by indictment.

The Supreme Court of the United States in many cases has announced certain fundamental principles which have a more or less direct bearing upon the questions involved in these cases. In Chicago, &c., R'y Co. *vs.* Minnesota, 134 U. S., at page 458, the court used this language: "The question of the reasonableness of
32 a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and thus in substance and effect of the property itself without due process of law and in violation of the Constitution of the United States, and, in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws."

In Reagan *vs.* Farmers' Loan and Trust Co., 154 U. S., at page 399, Mr. Justice Brewer, speaking for the court, said: "These cases all support the proposition that while it is not the province of the courts to enter upon the merely administrative duty of framing a tariff of rates for carriage, it is within the scope of judicial power and a part of judicial duty to restrain anything which in the form of a regulation of rates operates to deny to the owners of property invested in the business of transportation that equal protection which is the constitutional right of all owners of other property. There is nothing new or strange in this. It has always been a part of the judicial function to determine whether the act of one party (whether that party be a single individual, an organized body, or the public as a whole) operates to divest the other party of any rights of person or property. In every constitution is the guarantee against the taking of private property for public purposes without just compensation. The equal protection of the laws, which by the fourteenth amendment no State can deny to the individual, forbids
33 legislation, in whatever form it may be enacted, by which the property of one individual is without compensation wrested from him for the benefit of another or of the public. This, as has been often observed, is a government of law and not a government of men, and it must never be forgotten that under such a government, with its constitutional limits and guarantees, the forms of law and the machinery of government, with all their reach and power, must in their actual workings stop on the hither side of the

unnecessary and uncompensated taking or destruction of any private property legally acquired and legally held."

In St. Louis & San Francisco R'y Co. *vs.* Gill, 156 U. S., —, it was held that when a State legislature establishes a tariff of railroad rates so unreasonable as to practically destroy the value of the property of the company engaged in the carrying business courts of the United States may treat it as a judicial question and hold such legislation to be in conflict with the Constitution of the United States as depriving the company of its property without due process of law and as depriving it of the equal protection of the law.

In the case of Covington, &c., Turnpike Co. *vs.* Sandford, 164 U. S., 578, it was held that the courts have the power to inquire whether a body of rates prescribed by a legislature is unjust and unreasonable and such as to work a practical destruction of rights of property and, if found so to be, to restrain its operation, because such legislation is not due process of law.

In Smythe *vs.* Ames, 169 U. S., 466, after an elaborate review of all the authorities, the court held, as it had frequently done before, that a railroad corporation is a person within the meaning of the fourteenth amendment, declaring that no State shall deprive any person of property without due process of law nor deny
34 to any person within its jurisdiction the equal protection of the law. In that case the court also held that a State enactment or regulations made under the authority of a State enactment establishing rates for the transportation of persons or property by a railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public would deprive such carrier of its property without due process of law and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment of the Constitution of the United States. The court held, further, that, while rates for the transportation of persons and property within the limits of a State are primarily for its determination, the question whether they are so unreasonably law as to deprive the carrier of its property without such compensation as the Constitution secures, and therefore without due process of law, cannot be so conclusively determined by the legislature of the State or by regulations adopted under its authority that the matter may not become the subject of judicial inquiry. The court also held, further, that the idea that any legislature, State or Federal, can conclusively determine for the people *of* for the courts that what it enacts in the form of law or what it authorizes its agents to do is consistent with the fundamental law is in opposition to the theory of all our institutions, as the duty rests upon all courts, State or Federal, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation, and Mr. Justice Harlan, in delivering the opinion of the court in that case, at page 528, said: "The perpetuity of our institutions and the liberty which is enjoyed under them depends in no small degree upon the power given the judiciary to declare null and void

all legislation that is clearly repugnant to the supreme law
35 of the land."

The courts of the United States have not hesitated, and in order to preserve to all persons, corporations, and individuals alike the guarantees of the Constitution against invalid legislation, whether State or national, should not hesitate, to enforce the supreme law of the land. If in these cases the legislature or the railroad commission had established any rate by or through the act complained of the reasonableness and justness of that rate would be the legitimate subject of judicial inquiry under the decisions referred to, but no rates have in fact been fixed and none are authorized to be fixed except pursuant to the express provisions of the act itself nor until the commission has after trial "determined" that the railroad company had been "guilty of extortion." It will be observed that there is no general power delegated to the commission to fix rates, nor does the statute creating the commission give it any such right. Its sole authority in the premises is stated in the act above set forth, and must be based upon its conviction of the railroad extortion. It cannot move until what we may call this jurisdictional fact has been ascertained to exist, and then having proceeded to determine that the railroad has been "guilty of extortion," although it has been furnished with no unmistakable statutory standard as to what is to be held to be extortion, it lowers the rate of that road for that particular service. Its own opinion, its own judgment, is the sole guide upon both questions. If the law only conferred on the commission power to fix a schedule of rates for all railroads in the State generally it would be the duty of the court to await its action in that regard and then permit those rates, if called in question, to
36 stand or fall, as they might, in the court's judgment, be just and reasonable, or the reverse.

It might be conceded that in case a railroad commission was given general power to establish a schedule of rates a failure on the part of a carrier to conform to those rates when established might be made punishable (Reagan *vs.* Farmers' Loan and Trust Co., 154 U. S., 362). But this does not yet reach the case before us. Here the power given is to be exercised only where the commission has "determined" that the railroad company had been "guilty of extortion" in a given instance or instances complained of, and then apparently only by way of punishment therefor or as an occasion for laying a foundation for other punishment, although the legislature has established no definite test (unless in the Louisville & Nashville R. R. case) of what is an extortionate rate and no positive guidance in the case of any of the complainants, unless it be that company whose charges are fixed at the maximum rate stated in its bill. It is frankly and altogether properly conceded upon all hands that the railroad commission is not constitutionally a judicial body and cannot under the constitution or laws of Kentucky rightly exercise judicial functions. Section 27 of the present constitution of the State provides that the powers of the Government shall be divided into three separate departments, and each of them be confined to a separate body of magistracy, namely, the

legislative, the executive, and the judicial, and section 28 provides that no person or collection of persons being of one of those departments shall exercise any power properly belonging to either of the others. Under section 109 to 144, inclusive, the judicial department of the State government is established and no judicial tribunals except those named therein can lawfully be estab-
37 lished in Kentucky. A railroad commission is not one of these.

The Supreme Court of the United States in many cases holds that a railroad commission is a mere administrative body and part only of the executive department of the Government.

Our analysis of the act in question, however, has clearly shown that the whole apparent purpose of the act was to give the commission the judicial power or at least the quasi-judicial power to "hear and determine" whether a railroad has been "guilty of extortion," and as a result to lower the freight rate of that railroad for similar services. The commission could act only upon complaint made to it, unless in the presumably rare instances when information should otherwise come to it. The complaint must show what is loosely called a charging of an "extortionate" freight rate. The company complained of must be notified. This, it is true, must be given, not personally, but only through the mails, and the notice may be sent to a mere employé, who may be the most insignificant laborer and one who cares nothing for the interests of his employer. But there must be, at least, this sort of notice through the mails. At the hearing of the complaint, evidence which the commission may adjudge to be "relevant" may be heard. Arguments may be submitted and depositions may be taken and read. When the commission has "determined" that the company is "guilty of extortion" it shall then fix the rate thereafter to be charged in similar cases by that company only and not by carriers generally. This shall be entered upon the records of the commission.

Afterwards if the company thus found "guilty of extortion" shall in a like case charge or collect a rate greater than the one thus fixed or if any of its employés shall do so, it shall be guilty of the crime of extortion.

38 These matters all bear the marks of a judicial proceeding, and the fixing of a lower rate has all the appearances of inflicting that much punishment upon the party found "guilty of extortion" by this non-judicial body; but the act goes further and provides that if after the rate is thus fixed, that if after this possible punishment is thus inflicted, that company charges a higher rate for similar services, however reasonable it in fact might be in the judgment of the court, the real judicial tribunals of the State are then given the power to punish it or its employés therefor, though the power is apparently withheld from those courts of judicially inquiring whether the rate thus fixed under these circumstances by the commission was just or reasonable, or whether in the case of the Louisville & Nashville Company they exceeded the rates it is expressly authorized to charge by its charter.

It will be seen, too, that the act might literally apply equally and indiscriminately to domestic and to interstate traffic alike, although as to the latter it cannot be pretended that the legislature could give the commission any power whatever. That the commission cannot upon any complaint or information lawfully base any action upon charges of freight rates upon interstate commerce is too clear for argument, but as that may be true and the commission still have power to fix rates upon local freight, the question yet remains as to the respective rights of the complainants and the commission in respect to domestic commerce.

In a line of cases like Baldwin *vs.* Franks, 120 U. S., 686, the rule is established that where the language of a statute is so broad as to cover cases which are beyond the constitutional limits of
39 legislative power, as well as *those* which are not, the courts will not attempt to separate them, but will hold the entire statute to be void, and it is insisted that this principle should be applied at this point of these cases. It is, however, conceived that while the rule must apply to congressional enactments there may be a difference, where State laws are involved, where there is a degree of necessity for confining the language used to State concerns, the presumption being that the legislature, even by the use of language apparently the most general, does not intend to exceed its jurisdiction. Endlich on Interpretation of Statutes, sec. 169. But without deciding the point, and assuming, as is probably fair, that the legislature only meant the act in question to refer to changes of freight rates on local commerce, it still seems to the court that it is subject to several objections which cannot be overcome.

First. If one railroad should be convicted by the commission of having been "guilty of extortion," and if a lower rate should consequently be fixed by it, such rate is prescribed for the guilty railroad alone and for none of the others. The effect of the determination that the railroad has been guilty of extortion is individual. This being so, the others are still at liberty to charge as proper a rate which if charged by the one thus convicted would be deemed extortion, thus not merely inflicting a single penalty for a single offense, but placing the guilty railroad at the disadvantage of having a lower rate than its rivals and depriving it of the equal protection of the laws. It cannot be just; it cannot be an
40 equality of right or of protection for an act to be unlawful if done by one railroad in Kentucky and perfectly lawful if done by another railroad in the same State.

Second. The investigation of a complaint and the decision thereon by the commission that the railroad complained *of* is "guilty of extortion" being the only way to put the act in motion, the railroad is entitled to first have a judicial determination of the question of its guilt before the rate can be lowered as a penalty for the act charged to have been committed. The commission cannot judicially nor by due process of law determine the one question upon which its right to fix a lower rate must depend. This is emphasized by the absence of any precise statutory standard by which the commission is to be guided as to what is an extortionate charge. The

railroads have the inherent right to charge and collect a just and reasonable rate. Nothing short of a judicial proceeding conforming to due process of law, which not only includes due notice to the company interested, but a tribunal legally competent to act, can find a railroad guilty of extortion as a basis for imposing the arbitrary penalty of lowering their customary rates and as furnishing a stepping stone to ulterior penalties of great severity which it is the obvious purpose of the act to have inflicted. The legislature may delegate to a commission power to establish rates generally, but not the power to try an individual railroad for an offense and lower its rates alone as the penalty of such conviction.

Third. The most prominent feature of this legislation is the manifest purpose, if possible, to regulate rates by severe punishments for single offenses rather than by means of real attempts to solve the immense problem of fair and reasonable freight and passenger charges by industrious and earnest efforts to ascertain what they should be.

41 But even if the spirit of the statute be extreme and harsh rather than moderate and fair, this would be unavailing to the complainants if the provisions of the act had been kept within constitutional bounds. As already indicated, the act does not fix nor attempt to fix nor require the fixing of rates equally and generally for all. It aims alone at single instances and as a condition precedent to the right of the commission to make any change in any existing rate it requires that the commission shall find the railroad guilty of extortion without defining in any precise sense what that is. Of the hearing upon the charge before the non-judicial administrative body a species of notice and an opportunity to be heard as to the reasonableness and justness of the rates is given. But all that is thus done is preliminary to having a justification for the further step, if the railroad charges an excess rate over this thus fixed, of having it convicted of another and further extortion without any provision in the act that the judicial tribunal which shall try the accused for that offense may investigate and decide whether the rate fixed in this extraordinary preliminary proceeding before the administrative body was reasonable or just. No opportunity for such an investigation is afforded by the statute when the courts are given jurisdiction of the cases, and it is by no means certain that those courts would feel constrained to give the relief on the absence of an express statutory requirement. These considerations, therefore, seem to bring this case wit-in the principle first above quoted from the opinion of the Supreme Court in the Minnesota case. If it had been the intention of the legislature to recognize the right to a judicial investigation of the reasonableness of the rates fixed under the provisions of the act and to afford an opportunity therefor before a conviction upon an indictment for extortion,

42 it would have said so in unmistakable terms, in order that the accused might not be left to the doubtful chances of mere construction, not only as to the existence of that right, but as to the competency of a criminal court in a criminal case without a commissioner or adequate equipment to enforce it. It is, indeed,

manifest from the entire scope and plan of the enactment and its operation upon mere isolated cases only that it was the purpose to exclude all inquiry upon that subject after the commission had acted and to enforce, by rigorous and extravaga-te penalties, the rates this fixed, however reasonably and earnestly the railroad might desire to promptly have the question of the justness of those rates finally determined by a judicial inquiry. Upon the principles so often and so emphatically announced by the Supreme Court, this purpose this plainly written in the legislation must be fatal to its validity. It is fair to say generally that a railroad should take the penal consequences of charging unlawful rates, but until the customary rates fixed by itself are lawfully and constitutionally changed by the State or through its agencies the carrier should not be punished for collecting its own.

It may illustrate the subject to inquire whether punishments ought to await a final determination of what are just and reasonable rates, or whether their infliction should begin at once, with the possibility or probability of being entirely unconstitutional. Justice obviously dictates the former course, particularl- as the latter might turn out to be utter spoliation.

Viewing the act as a whole, and considering the only modes by which it can be put into operation, the court is of opinion that those modes are not due process of law, and that its enforcement
43 would deprive the railroad company of the constitutional guarantee of its rights secured by the fourteenth amendment.

Fourth. And it may be that the principles announced by the court of appeals in L. & N. R. R. Co. vs. The Commonwealth, 99 Ky., 132, by which section 816 of the Kentucky Statutes, which made it an offense for a carrier to charge more than a "just and reasonable rate," was held to be void for uncertainty, would apply in this connection, particularly as the act before us is supposed to attempt to supply what that decision held to be lacking. It seems to the court that, viewed in the light of the suggestions already made, the act in question is quite subject to some of the criticisms made upon section 816.

Fifth. As applying specially to the Louisville & Nashville Railroad Co., the court is further of opinion that the act cannot be maintained, because, without attempting directly, and probably not at all, to repeal the provisions of the charter of that company as to maximum rates, it still leaves it within the power of the commission to make it a crime for that railroad to charge the rates which its charter expressly authorizes. Again, it is not to be inferred that even if the charter of this company can be amended, it was done by implication by the act before us. And still again, as the charter of that company was passed before 1856, when the general law was first enacted reserving to the State the power thereafter to amend all charters of corporations, it probably cannot be changed at all without its consent, which it is not pretended has been given. But whether so or not, it can only be done, if at all, by language which is plain and unmistakable, and not merely by so doubtful an implication as is presented here.

Sixth. As to the case of the Chesapeake & Ohio Co. This court has jurisdiction of that action also by reason of the diverse citizenship of the parties to it, and, in the absence of any construc-
44 tion of the act by the court of appeals of Kentucky, must construe it for itself, and the court is of opinion that the act violates the constitution of the State in attempting to confer upon the commission what are judicial powers and functions, to wit, the power, after complaint and notice given, to "hear and determine" that the railroad has been "guilty of extortion," and as a consequence, after that finding, to further decide that the freight rate of that railroad for similar services shall be a lower figure. These steps, as they apply only to individual instances and are not a method of fixing rates generally, constitute the very essence of a judicial proceeding and judgment. Indeed, this ground of relief may possibly broaden out so as *per se* to aid all the others.

The court is always reluctant to interfere with the exercise by any State officer of his official functions, but in the most eminent degree the safety of the property and the rights of the citizens of the community depend upon the supremacy of the constitution.

The value of these safeguards is not diminished because individuals associate as a body corporate. They are citizens none the less, and the court must not shrink in clear cases from discharging its plain duty to uphold the dominant authority. If, as before intimated, the act in question only empowered the commission to fix rates generally and for all alike, which would be a mere administrative work, the court would not interfere until that power had been exercised and the propriety of the result called in question; but here not only may a rate in a single instance be fixed by a process plainly unconstitutional, but the most serious, not say to excessive, punitive consequences may be visited not only upon
45 railroad, but also upon the individual citizen whom it may employ. If any citizen or employé were in the meantime fined and imprisoned for non-payment of the fine he might be quite beyond adequate remedy, even if thereafter the question as to this legislation should be judicially and finally determined in accordance with the views we have expressed. Who, for example, is to compensate him for the confinement in jail? Pending this litigation, the fining and imprisonment may go on by means of judicial processes entirely beyond the reach of this court if an injunction *pendente lite* is at the threshold refused. This court cannot, except in bankruptcy matters, enjoin a proceeding in a State court. While in a criminal case under the act it might by careful practice be possible to get to the Supreme Court of the United States, the effort would be most tedious and expensive, and there might be a great multiplicity of cases growing out of numerous separate changes of rates.

It seems, therefore, better, pending a final adjudication of these most important questions, to prevent the possibility of irreparable injury to any one by an adequate order. An injunction *pendente lite* is granted in each case.

WALTER EVANS, *Judge.*

And on the 25th day of July, 1900, the following decree was entered:

46 Circuit Court of the United States, Sixth Circuit, District of Kentucky.

JULY 25, 1900.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
vs.
CHARLES C. McCHORD ET AL., Defendants.
} Final Decree.

And now, on this day, came the complainant, The Louisville & Nashville Railroad Company, by Walker D. Hines and Helm Bruce, counsel, and came the defendants, Charles C. McChord, J. F. Dempsey, and John C. Wood, by Robert J. Breckinridge, attorney general of Kentucky; D. W. Baird and Louis McQuo-n, counsel, and on motion of the said defendants, complainant not objecting thereto, the demurrer to the whole bill heretofore filed herein by the said defendants was by consent of all parties brought on for hearing, and, having been argued by counsel, the court, being advised, considered the said bill to be sufficient and doth adjudge and order that the demurrer thereto be, and the same is, accordingly overruled.

Thereupon the court offered to give and assign time to the said defendants to answer the said bill; but the said defendants, by counsel, declined to answer herein at all and elected to stand by their demurrer.

And thereupon this cause, by consent in open court of all parties, presently came on for hearing in chief, and, all parties submitting this cause for final decree, the court doth order that the said bill of complaint be taken as confessed against the said defendants, and doth further adjudge, order, and decree that the injunction heretofore granted in this cause to restrain the said defendants, Charles C. McChord, J. F. Dempsey, and John C. Wood, from entertaining

47 any complaint against complainant, or giving any notice to or conducting any hearing against complainants, or fixing any rates, toll, or compensation which complainant may charge, collect, or receive, or from entering any such rate, toll, or compensation on the record book of their office, or signing the same or mailing any copy thereof to any officer, agent, or employé of the complainant, or from taking any action whatever against or in relation to the complainant under said act of March 10th, 1900, entitled "An act to prevent railroad companies or corporations owning or operating a line or lines of railroad and its officers, agents, or employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribe the manner of enforcing the provisions of this act and penalties for the violation of its provisions," approved on the 10th day of March, 1900, be, and it is hereby, made perpetual, as well as to said named defendants as to their successors

in office of the railroad commission of Kentucky and their agents and servants.

And the court doth further order that the said defendants shall pay the costs of the complainant herein incurred.

The said defendants pray an appeal from the foregoing decree to the Supreme Court of the United States, which is accordingly granted upon the execution by them of a bond, with surety, to be approved by the court, in the penal sum of $500, conditioned according to law; and thereupon said defendants presented a bond with David W. Baird as surety thereon, which is approved by the court and ordered to be filed; and then came complainant and waived service of a citation upon said appeal and consented that no citation thereon should be issued.

48 And on the 25th day of July, 1900, came the parties, by counsel, and on the hearing of the complainant's bill and on the demurrer to the bill of complaint herein defendants offered to read to the court the following acts of the General Assembly of the Commonwealth of Kentucky pertaining to the complainant's charter; and thereupon it was ordered, by consent, that the said acts be, and they are, considered as read on the hearing of said demurrer and bill:

Act of March 5, 1850.
Act of March 20, 1851.
Act of December 15, 1851.
Act of January 9, 1852.
Act of February 24, 1854.
Act of March 7, 1854.
Act of January 17, 1856.
Act of February 6, 1858.
Act of February 28, 1860.
Act of May 16, 1861.
Act of February 26, 1863.
Act of January 8, 1864.
Act of February 10, 1864.
Act of March 2, 1865.
Act of February 21, 1868.
Act of March 10, 1869.
Act of March 21, 1870.
Act of March 15, 1871.
Act of March 16, 1871.
Act of February 1, 1872.
Act of March 19, 1872.
Act of February 9, 1876.
Act of March 9, 1876.
Act of March 18, 1876.
Act of March 6, 1878.
Act of January 27, 1880.
Act of February 27, 1880.
Act of January 28, 1882.
Act of April 7, 1882.
Act of April 29, 1890.

The petition for appeal is as follows:

49 Circuit Court of the United States in and for the District of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

Petition on Appeal, with Allowance of Appeal.

To the Honorable Walter Evans, district judge and one of the judges of the above-named court, presiding therein:

The above-named defendants and appellants, Charles C. McChord, James F. Dempsey, and John C. Wood, in the above-entitled cause, conceiving themselves aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause under date of July 25, 1900, wherein and whereby, among other things, it was and is ordered and decreed that these defendants and appellants be perpetually enjoined from proceeding under a statute of the State of Kentucky approved March 10, 1900, to fix any rate against the complainant and appellee as directed and authorized by said statute, do hereby appeal to the Supreme Court of the United States from said order and decree for the reasons set forth in the assignment of errors, which is filed herewith, and they pray that this their petition for their said appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated July 25, 1900.

KOHN & BAIRD,
R. J. BRECKINRIDGE,
ZACK PHELPS, &
LEWIS McQUOWN,
Solicitors for Defendants and Appellants.

Order.

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed and the bond is fixed at $500.00; and thereupon came the counsel for the defendants and appellants in this case and presented their appeal bond in the sum of $500.00, which is approved.

Done in open court this July 25, 1900.

____ ____,
District Judge and One of the Judges of said United States Circuit Court, Presiding Therein.

The assignment of errors above referred to is as follows:

50 Circuit Court of the United States in and for the District of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

Come the defendants, Charles C. McChord, James F. Dempsey, and John C. Wood, and file the following assignment of errors upon which they and each of them will rely upon their appeal from the decree made by this honorable court on the 25th day of July, 1900, in the above-entitled cause:

1.

That the United States circuit court in and for the district of Kentucky erred in overruling the demurrer interposed by these defendants and appellants to the original bill filed in said cause.

2.

That the said court erred in rendering judgment against these defendants and appellants in said cause upon the pleadings in said cause, and that said judgment is contrary to the law and the facts, as stated in the bill of complaint in said cause.

3.

That the said court erred in rendering a perpetual order of injunction against these defendants and appellants.

4.

That the said court erred in holding that it had jurisdiction of these defendants and appellants upon the subject-matter set forth in the bill of complaint, and before these defendants and appellants had proceeded under said bill to make or establish any rates against the complainant and appellee.

5.

That the said court erred in holding that under the statute of the State of Kentucky complained of these defendants and appellants act as a judicial body or are delegated judicial powers, contrary to the constitution of the State of Kentucky.

51 6.

That the said court erred in holding that the said statute complained of deprives the complainant and appellee of its property without due process of law or denies to the complainant and appellee the equal protection of the law, as guaranteed by the fourteenth amendment of the Constitution of the United States.

7.

That the said court erred in holding that the said statute complained of attempts to regulate interstate commerce and is in violation of article 1, § 8, of the Constitution of the United States.

8.

That the said court erred in holding that the said statute complained of is void and unconstitutional because it does not provide a judicial hearing for the complainant and appellee with reference to the rates to be fixed thereunder or after said rates shall have been fixed.

9.

That the said court erred in holding that the said statute complained of is void because it does not provide that the rates which shall be fixed thereunder shall apply to all railroads in the State of Kentucky, and that because of said failure the said statute denies to the complainant and appellee the equal protection of the law.

10.

That the said court erred in holding that the complainant and appellee under its charter has a contract with the State of Kentucky whereby its rates have been fixed, and that the statute complained of violates its said contract, as forbidden by article 1, § 10, of the Constitution of the United States.

Wherefore the said defendants and appellants on appeal pray that the judgment of said court be reversed.

KOHN & BAIRD,
R. J. BRECKINRIDGE,
ZACK PHELPS, &
LEWIS McQUOWN,
Counsel for Defendants.

The appeal bond above referred to is as follows:

52 Circuit Court of the United States, District of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
C. C. McCHORD, J. F. DEMPSEY, and JOHN C. WOOD.

Know all men by these presents that we, C. C. McChord, J. F. Dempsey, and John C. Wood, and D. W. Baird, are held and firmly bound unto the Louisville & Nashville Railroad Company in the sum of five hundred dollars, to be paid to the said Louisville & Nashville Railroad Company, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, *jointly and severally, and our and each of our heirs, executors, and administrators*, firmly by these presents.

Sealed with our seals and dated this 25th day of July, A. D. 1900.

Whereas the above-named C. C. McChord, J. F. Dempsey, and John C. Wood hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named C. C. McChord, J. F. Dempsey, and John C. Wood shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. C. McCHORD,
J. F. DEMPSEY,
JOHN C. WOOD,
By LEWIS McQUOWN, *Att'y.*
DAVID W. BAIRD.

Sealed and delivered in presence of—
THOS. SPEED, *Clerk.*

53 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 52 pages contain a true and correct transcript of the record and proceedings in the case of Louisville & Nashville Railroad Company *vs.* C. C. McChord *et al.*, No. 6814, as the same appears from the files and records in my said office.

Witness my hand and seal of said court this 2d day of August, A. D. 1900.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN,
Deputy Clerk.

Endorsed on cover: File No., 17,881. Kentucky C. C. U. S. Term No., 396. Charles C. McChord, James F. Dempsey, and John C. Wood, appellants, *vs.* The Louisville & Nashville Railroad Company. Filed August 21st, 1900.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 142.

CHARLES C. McCHORD, JAMES F. DEMPSEY, AND JOHN C. WOOD, APPELLANTS,

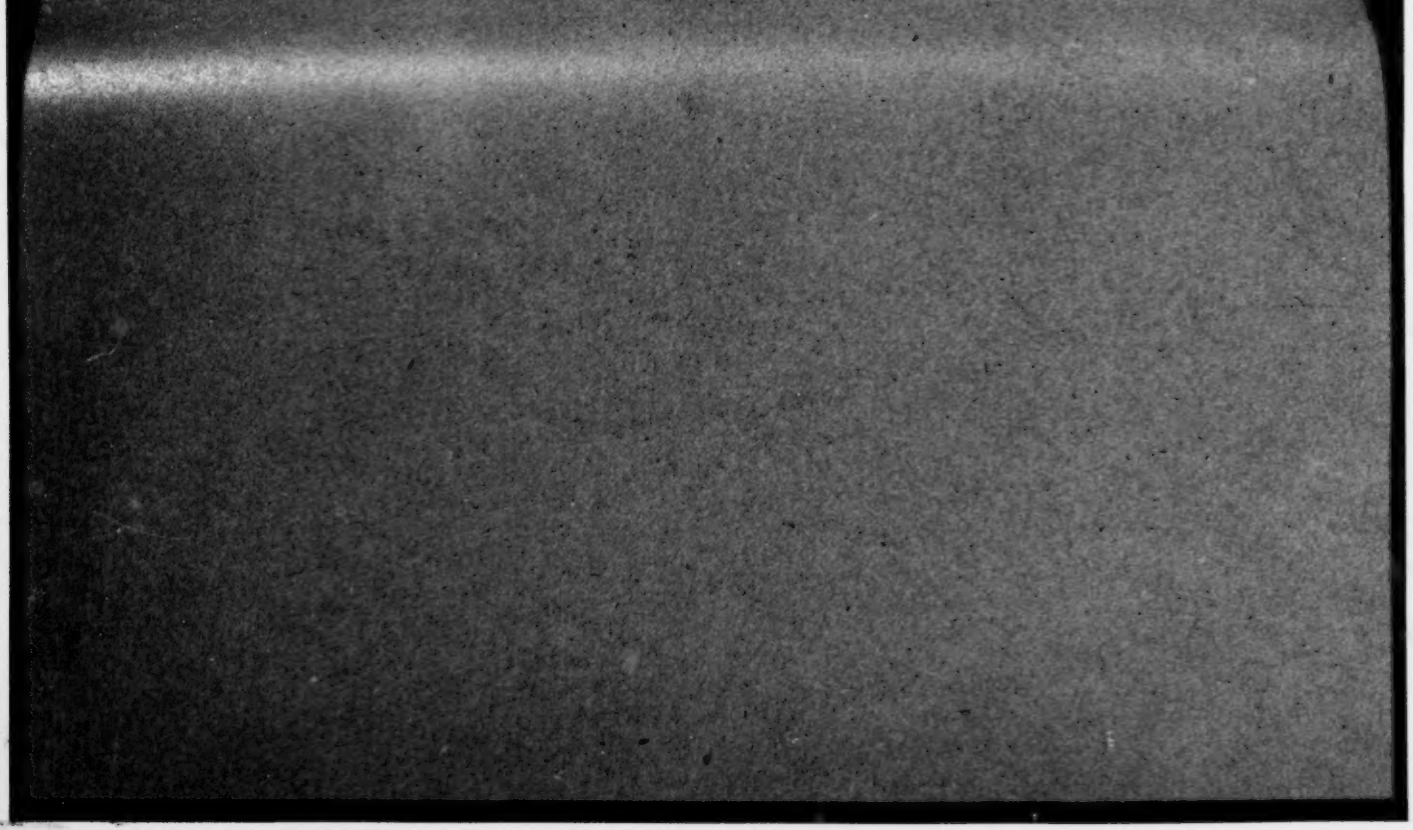
vs.

THE LOUISVILLE, HENDERSON AND ST. LOUIS RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED AUGUST 21, 1900.

(17,882.)



(17,882.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 397.

CHARLES C. McCHORD, JAMES F. DEMPSEY, AND JOHN C. WOOD, APPELLANTS,

vs.

THE LOUISVILLE, HENDERSON AND ST. LOUIS RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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Judd & Detweiler, Printers, Washington, D. C., August 22, 1900.

1 Proceedings of the circuit court of the United States for the district of Kentucky at a regular term begun and held at the Federal court hall, in the city of Louisville, on Monday, February 19th, A. D. 1900.

Present: Hon. Walter Evans, sitting as circuit judge.

LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY CO., Complainant,
vs.
C. C. McCHORD, J. F. DEMPSEY, and JOHN C. WOOD, Defendants. } No. 6815.

Be it remembered that heretofore, to wit, on the 5th day of July, A. D. 1900, came the complainant in the above-entitled cause and filed its bill of complaint herein against the above-named defendants; which said bill of complaint is as follows:

2 Circuit Court of the United States, Sixth Circuit, District of Kentucky.

LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY
vs.
C. C. McCHORD, J. F. DEMPSEY, and JOHN C. WOOD.

To the judges of the circuit court of the United States for the district of Kentucky:

The Louisville, Henderson & St. Louis Railway Company, a corporation organized under and pursuant to the laws of the State of Kentucky and having its principal place of business in the city of Louisville, in said State, brings this its bill against C. C. McChord, of Springfield, Washington county, Kentucky; J. F. Dempsey, of Madisonville, Hopkins county, Kentucky, and John C. Wood, of Mt. Sterling, Montgomery county, Kentucky, all of whom are citizens of the State of Kentucky; and thereupon your orator complains and says that the amount in controversy herein far exceeds the sum and value of ten thousand dollars, exclusive of interest and costs.

1. Your orator was incorporated and organized under the general statutes of Kentucky providing for the incorporation of railroad companies, and as such has the power to contract and be contracted with, to sue and to be sued, and generally the power granted by said act of incorporation to railroad companies is Kentucky.

Your orator's road extends from West Point, Kentucky, to Henderson, Kentucky, and from Irvington, Kentucky, to Fordsville, Kentucky, and from a point on the last-named road there is a branch running to Fordsville of about four miles long.

3 Your orator says that while its road lies wholly within Kentucky, yet it is nevertheless a link in a through system of roads, and much of the traffic hauled over orator's road is interstate traffic, and through rates are made from points of origination in

and beyond Kentucky to points of destination in and beyond Kentucky.

What proportion the traffic wholly within Kentucky bears to the whole traffic your orator is unable to say.

4 2. Defendants herein are holding and exercising the offices of railroad commissioners of the State of Kentucky, having been duly elected thereto and qualified therefor, and as such constitute the railroad commission of said State, and as such claim and unless restrained by the orders of this court will exercise the right to fix rates for the transportation of passengers and property over the various lines of your orator's railroad by virtue of an alleged act of the General Assembly of the Commonwealth of Kentucky, which it is claimed became a law on the — day of March, 1900, and took effect on the 12th day of June, 1900, entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, and employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto and prescribing the manner of enforcing the provisions of this act and penalties for the violations of its provisions." The said act consists of five sections in the following words, to wit:

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SEC. 1. When complaint shall be made to the railroad commission accusing any railroad company or corporation of charging, collecting or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, or when said commission shall receive information or have reason to believe that such rate or rates are being charged, collected or received, it shall be the duty of said commission, to hear and determine the matter as speedily as possible. They shall give the company or corporation complained of not less than ten days' notice, by letter mailed to an officer or employé of said company or corporation, stating the time and place of the hearing of same; also the nature of the complaint or matter to be investigated, and shall hear such statements, arguments or evidence offered by the parties as the commission may deem relevant; and should the commission determine that the company or corporation is, or has been guilty of extortion, said commission shall make and fix a just and reasonable rate, toll

5 or compensation which said railroad company or corporation may charge, collect or receive for like services thereafter rendered. The rate, toll or compensation so fixed by the commission shall be entered and be an order on the record book of their office and signed by the commission, and a copy thereof mailed to an officer, agent or employé of the railroad company or corporation affected thereby, and shall be in full force and effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad company or corporation, or any officer, agent, or employee thereof, charge, collect or receive a greater or higher rate, toll, or compensa-

tion, for like services thereafter rendered than that made and fixed by said commission, as herein provided, said company or corporation, and said officer, agent or employé, shall each be deemed guilty of extortion, and upon conviction, shall be fined for the first offense in any sum not less than five hundred dollars nor more than one thousand dollars, and upon a second conviction, in any sum not less than one thousand dollars nor more than two thousand dollars, and for third and succeeding convictions in any sum, not less than two thousand dollars nor more than five thousand dollars.

SEC. 2. The circuit court of any county into or through which the line or lines of road carrying such passenger or freight, owned or operated by said railroad, and the Franklin circuit court, shall have jurisdiction of the offense against the railroad company or corporation offending and the circuit court of the county where such offense may be committed by said officer, agent or employé, shall have jurisdiction in all prosecutions against said officer, agent or employé.

SEC. 3. Prosecutions under this act shall be by indictment.

SEC. 4. All prosecutions under this act shall be commenced within two years after the offense shall have been committed.

SEC. 5. In making said investigation said commission may, when deemed necessary, take the depositions of witnesses before an examiner or notary public, whose fee shall be paid by the State, and upon the certificate of the chairman of the commission, approved by the governor, the auditor shall draw his warrant upon the treasurer for its payment."

6 By said act said railroad commission is authorized and required, when complaint is made or when it receives information or has reason to believe that any railroad company or corporation is charging, collecting, or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, to hear and determine the matter as speedily as possible, and before doing so to mail not less than ten days beforehand a notice to any officer, agent, or employé of said company or corporation—for example, to a brakeman or section hand—stating the time and place of the hearing and the nature of the matter to be investigated.

Said railroad commission is further authorized and required by said act, if upon such investigation made upon such notice it shall determine that said company or corporation is or has been guilty of extortion in the particulars charged, to make and fix, without any notice and without any investigation, what it shall deem to be a just and reasonable rate, toll, or compensation which said company or corporation may thereafter charge, and said rate, toll, or compensation so fixed shall be in full force and effect at the expiration of ten days after the said commission shall have mailed a copy of the order fixing the same to any officer, agent, or employé of the said company or corporation affected thereby—for example, as above stated, such notice may be mailed to a brakeman or section hand—and at all times thereafter said commission may, at any time and without any notice and without any investigation, modify or change the rates thus fixed by it; and if said company or corporation or

any of its officers, agents, or employés shall thereafter charge, collect, or receive a greater rate than that made and fixed by said commission, as above stated, said company or corporation and said officers, agents, and employés are each by said act made guilty of extortion and, upon conviction, are each to be fined for the first offense not less than five hundred dollars nor more than one thousand dollars, and upon a second conviction in any sum not less than one thousand dollars nor more than two thousand dollars, and for third and succeeding convictions in any sum not less than two thousand dollars nor more than five thousand dollars.

7 Thus, under said act, said railroad commission is authorized to fix the rates of your orator and all other railroad companies or corporations without any notice and without any investigation from or by it. The rates so fixed are to go into full force and effect simply by the lapse of ten days from the date of the mailing of the copy of the order fixing the same to any officer, agent, or employé of the railroad company or corporation, and unless the railroad company or corporation affected thereby straightway complies with said rate, although such rate may be a palpable invasion of such company's or corporation's constitutional rights, such corporation will be subject to the excessive fines fixed in said act with respect to each shipment passing over its road to which said commission desires said rates so fixed to apply, and every officer, agent, or employé of said company or corporation either charging, collecting, or receiving the rate fixed and charged by said company or corporation for each of such shipments in question, although the said corporation may have full right and power under the Constitution of the United States to charge such rate, will likewise be subjected to said excessive fines.

3. All of your orator's rates charged, collected, or received within the State of Kentucky are just and reasonable and have not been sufficient for many years to give it a fair return upon the reasonable value of its investment, notwithstanding it has at all times operated its property with the strictest economy and in the most skilful manner.

8 4. It is the duty of said railroad commission, composed, as aforesaid, of the defendants herein, to see that the laws relating to all railroads, except street, are faithfully executed, and to exercise a general supervision over the railroads of the State. To this end they are authorized and required to inquire into the management of affairs of railroad companies; to inspect and examine their tracks, bridges, tunnels, and other structures; to supervise facilities at stations, and in many other ways to exercise administrative functions with respect to the railroads of said State. The constitution of said State divides the powers of its government into three distinct departments, each to be confined to a separate body of magistracy—those which are legislative to one, those which are executive to another, and those which are judicial to another—and declares that no person or collection of persons being of one of those departments shall exercise any power properly belonging to either of the others, except in the instances expressly directed and per-

mitted in said constitution. By said constitution the judicial power of said State is vested in the senate, when sitting as a court of impeachment, and one supreme court, to be styled the court of appeals, and the courts established by said constitution, to wit, circuit courts, quarterly courts, county courts, justices' courts, police courts, and fiscal courts. The said railroad commission is not established as a court by said constitution and is not expressly directed or permitted by said constitution to exercise any judicial powers; on the contrary, its powers are essentially and purely of an administrative character, and it essentially belongs to the executive department of the State government. The laws of said State not only fail to confer upon it judicial functions or powers, but prohibit the conferring of any such powers upon it, and by reason of the administrative functions with respect to the conduct and regulation of railroads which said commission is required and authorized to perform it is rendered essentially unfit to exercise judicial functions.

9 5. While all other common carriers, whether operating railroads or not, are subject only to the requirement that their rates are just and reasonable, and in case of controversy are entitled to have the judgment of the courts upon that question, the said act hereinbefore referred to singles out railroad corporations and denies them the equal protection of the laws applying to all other common carriers, and deprives said railroad corporations of any opportunity to have a judicial determination of the reasonableness of their rates when the same are called in question, and substitutes therefor the determination of said railroad commission, which is not and cannot be a court and which does not afford and cannot afford a judicial hearing or determination of questions brought before it; and whereas all other common carriers in the event of a judicial determination by a court of competent jurisdiction that their rates are unreasonable are bound to refund only the excess of such rates over what are just and reasonable rates, and no other penalty or consequence attaches to such judicial determination, yet railroad corporations are to be subjected, in the absence of any judicial determination as to whether their rates are reasonable or otherwise, and simply upon the determination of said non-judicial tribunal, the railroad commission, that such rates are unreasonable, to the penalty of having the power to make their rates taken out of their hands and vested exclusively in said railroad commission, which commission is then without any hearing, judicial or otherwise, to fix such rates as it may choose, and is thereafter without any notice and without any hearing, judicial or otherwise, to have the right at its pleasure to modify the rates so fixed by it, and if said railroad corporations fail to charge the rates thus fixed for them by this unjust and unconstitutional procedure they will be subjected for every shipment passing over their lines to which said railroad commission may desire said rates so fixed by it to apply to the prosecutions, fines, and penalties imposed in said act.

10 6. Your orator submits that under the Constitution of the United States it is entitled to charge reasonable rates for the

use of its property, and that it cannot be compelled to charge rates fixed by the railroad commission of Kentucky in the absence of a judicial investigation and determination that the rates so fixed are just and reasonable; that the said act makes no provision for any investigation or determination even by the railroad commission that the rates fixed by it are just and reasonable, and the said commission may fix such rates without any notice to the railroad corporations to which said act applies as to what said commission proposes to do and without any investigation of the questions involved, and may thereafter change or modify said rates without any notice or investigation; but that even if said commission should choose to give notice and investigate such questions, such investigation and resulting determination would not satisfy your orator's constitutional rights to a judicial determination, because said commission is not a court, nor is it clothed with judicial functions, but, on the contrary, it is an administrative tribunal, which, under the law, cannot exercise judicial functions, and which, by reason of the functions it does exercise, is in its nature incapable of affording the judicial investigation to which your orator is entitled, and by said act your orator is denied the privilege and right to have it judicially determined by a court of competent jurisdiction whether the rates fixed and charged by it are just and reasonable, and whether the rates fixed by said commission amount to a confiscation and spoliation of its property. If, therefore, defendants be permitted to proceed under said act, your orator will be compelled to charge the rates fixed by them without any opportunity for a judicial investigation and determination as to their reasonableness, and it will thus be deprived of the lawful use of its property and in substance and effect of its property itself without due process of law, and will also be denied the equal protection of the laws, in violation of section 1 of article 14 of the amendments to the Constitution of the United States.

11 7. Your orator further says that the said act of March, 1900, relates to all freight and passenger rates charged, collected, or received by railroad companies in the Commonwealth of Kentucky, and is not restricted to rates actually charged, collected, and received, within the Commonwealth of Kentucky, for transportation commencing and ending within the said State, and therefore by its terms is an express and direct interference with and regulation of commerce among the States, and therefore the said act is in conflict with paragraph 3 of section 8 of article 1 of the Constitution of the United States, which gives to the Congress of the United States exclusive power to regulate commerce among the States, and which power has been exercised by Congress by an act of February 4, 1887, entitled "An act to regulate commerce among the States," and by the acts amendatory thereof, and that said act of March —, 1900, is therefore null and void.

And defendants have called for and obtained from your orator a list of rates fixed and charged by it for transportation of freight and passengers over its railroads in the State of Kentucky for the purpose of considering whether or not they shall be altered and re-

duced in accordance with the terms of said act, and are giving it out in speeches and interviews that they intend to proceed at once under said act, and unless restrained by the order of this court defendants will proceed at once to hear and determine complaints under said act, although the same is in contravention of the Constitution of the United States in all the particulars hereinabove set out, and is therefore null and void, and will proceed thereupon to reduce your orator's rates to such as they think your orator should charge, and will thereafter at pleasure modify and still further reduce the rates so fixed, and if your orator does not observe the rates so fixed, no matter how unjustly and unreasonably low, your orator will be subjected to innumerable prosecutions throughout the State of Kentucky for failing to comply with such rates fixed in this unconstitutional manner, and it will be subjected to innumerable suits by con-

12 signors and consignees, who will claim the right to ship at said rates so unconstitutionally fixed and to sue for any excess they may be charged over said rates, though rightfully charged, and at the same time all your orator's officers and agents and servants, though perfectly innocent of any offense and though merely assisting your orator to maintain its constitutional rights, will be indicted, prosecuted, and heavily fined, to the great demoralization of the public service which your orator is bound to render, and so it is, unless said defendants are restrained by the order of this court from proceeding under said act, your orator's contract rights will be impaired, it will be deprived of its property without due process of law, denied the equal protection of the law, and subjected to great — irreparable wrong and injury and to a vast multiplicity of prosecutions and actions in the courts of said State.

Forasmuch as your orator can have no adequate relief except in this court, and to the end that the defendant- may, if they can, show why your orator shall not have the relief herein prayed, and that they answer this bill according to the course and practice of the court, but not under oath, the answer of each of them under oath being hereby expressly waived, your orator prays that said act of March —, 1900, be decreed and be declared to be in contravention of the Constitution of the United States, and therefore null and void, and that until the further order of the court said defendants be enjoined from taking any action whatever against or in relation to complainant under said act; that said injunction may be perpetual upon final hearing, and as irreparable injury to your orator may ensue if defendants should take any action against or in relation to your orator under said act before the motion for a preliminary injunction can be heard, your orator prays that an order be granted restraining defendants from doing the acts herein sought to be enjoined, and your orator prays for such other and further relief as in equity it may be entitled to, and further prays that your honors also grant unto your orator a writ of subpœna of the United States of America, directed to the said C. C. McChord,

13 J. F. Dempsey, and John C. Wood, commanding them on a day certain to appear and answer this bill and to abide and

perform such order and decree as to your honor- shall seem meet and equitable; and your orator will ever pray, etc.

HELM, BRUCE & HELM,
Solicitor- for Complainant.

UNITED STATES OF AMERICA, *District of Kentucky,* } ss:

On this 5th day of July, 1900, before me personally appeared Attilla Cox, the president of The Louisville, Henderson & St. Louis Railway Company, the complainant above named, who, being duly sworn, deposes and says that he is the president of the Louisville, Henderson & St. Louis Railway Company and familiar with its business, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

ATTILLA COX.

Subscribed and sworn to before me this 5th day of July, 1900.

HUSTON QUIN,
N. P. J. C., Ky.

My commission expires with the next session of the Kentucky senate.

14 And upon the bill there issued the following process:

The President of the United States of America to Charles C. McChord, James F. Dempsey, and John C. Wood, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America for the district of Kentucky, at the Federal court hall, in city of Louisville, on the first Monday in August next, to answer a bill in equity exhibited against you in our said court by Louisville, Henderson & St. Louis Railway Company, which you shall in nowise omit under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court, hereto affixed, at the clerk's office of said court, in Louisville, this 5 day of July, A. D. 1900, and in the 125 year of our Independence.

Attest:

THOS. SPEED,
C. C. C., K. D.,
By HENRY F. CASSIN,
His Deputy.

MEMORANDUM.—The defendants are to enter their appearance in the suit in the clerk's office on or before the 6th day of August next, the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

THOS. SPEED, *Clerk.*
HENRY F. CASSIN,
His Deputy.

And thereupon the marshal made the following returns:

A. D. 1900.—Executed this 13th day of July, 1900, at Mt. Sterling, Kentucky, by delivering a true copy of the within spa. in ch'y to John C. Wood.

A. D. JAMES,
U. S. Marshal,
By C. McCARTY, *D. M.*

15 Came to hand July the 6th, 1900.

A. D. JAMES, *U. S. M.*,
By LAWRENCE YONTS,
Deputy U. S. M. for the District of Kentucky.

Executed on James F. Dempsey by delivering to him a copy hereof this July the 9th, 1900.

A. D. JAMES,
U. S. Marshal,
By LAWRENCE YONTS,
Deputy U. S. Marshal for the District of Kentucky.

Executed the within on Charles C. McChord, at his residence, in Springfield, Ky., by delivering to him a true copy of this spa. in ch'y.
This July 23, 1900.

A. D. JAMES, *U. S. Marshal,*
By G. C. THOMPSON, *D. U. S. M.*

16 Circuit Court of the United States, Sixth Circuit, District of Kentucky.

JULY 9TH, 1900.

LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY, Complainant,
vs.
C. C. McCHORD, &c., Defendants.
} Order.

This day came the complainant, by Helm, Bruce & Helm, and produced herein notices, duly served upon the defendants, that the complainant would upon this day enter the motion for an interlocutory injunction in the terms of the prayer of its bill of complaint herein.

And thereupon came the defendants, by the Honorable Robert J. Breckinridge, attorney general of Kentucky, but not waiving any objections to the jurisdiction of the court or other objections to the maintenance or conduct of this suit, but expressly reserving the same; and the complainant thereupon moved the court to grant to it an interlocutory injunction in accordance with the terms of the prayer of its bill of complaint herein; to which the defendants objected.

And thereupon, by consent, the said motion is assigned to the 13th day of July, 1900, at ten o'clock a. m., for hearing, it being agreed and so ordered that in the meantime the *status quo* shall be pre-

served and no effort made by the defendants to enforce the terms of the act of the legislature set out in the bill of complaint and commonly known as the McChord law against this complainant.

The notice above referred to is as follows:

17 Circuit Court of the United States in and for the District of Kentucky.

LOUISVILLE, HENDERSON & ST. LOUIS RAILROAD COMPANY, Complainant,
vs.
CHARLES C. McCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.
} Notice.

GENTLEMEN: You are hereby notified that on Monday, July 9, 1900, at or about the hour of ten a. m., the complainant in the above-entitled cause will, before the United States circuit court, sitting at Louisville, Kentucky, move the court for a temporary injunction in accordance with the prayer of its bill of complaint herein this day filed, and a copy of which bill of complaint accompanies this notice and is to be served upon Charles C. McChord, the chairman of the railroad commission of Kentucky.

July 5th, 1900.

Respectfully,

LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY,
By HELM, BRUCE AND HELM, *Solicitors.*

To Hon. Charles C. McChord, Hon. James F. Dempsey, Hon. John C. Wood.

18 In the Circuit Court of the United States, District of Kentucky.

LOUISVILLE, HENDERSON & ST. LOUIS RAILROAD CO., Complainant,
vs.
CHARLES C. McCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

E. C. Turner, being duly sworn, states that he served the foregoing notice and the bill of complaint therein referred to upon the therein-named Charles C. McChord on the 5th day of July, 1900, by delivering to the said Charles C. McChord, at Springfield, Ky., at 7.45 p. m., on said date, a copy of the said notice and a copy of the said bill of complaint, and that he served the said notice upon the therein-named James F. Dempsey on July 6, 1900, by delivering to him a copy of the said notice at Louisville, Ky., at 9.50 a. m. on said date.

And Thos. B. Harrison, Jr., being duly sworn, states that he served the foregoing notice upon the therein-named John C. Wood on July 5th, 1900, by delivering a copy of said notice to said John C. Wood, at Mt. Sterling, Ky., at 9.45 p. m. on said date.

E. C. TURNER.
THOS B. HARRISON, JR.

Subscribed and sworn to before me by E. C. Turner and Thos. B. Harrison, Jr., respectively, this 6th day of July, 1900. My commission expires January 8, 1903.

G. W. B. OLMSTEAD,
Notary Public, Jefferson Co., Ky.

19 And on the 13th day of July, 1900, came the complainants, by Helm, Bruce & Helm, i-s counsel.

Came also the defendants, by Louis McQuown and D. W. Baird, their counsel, and filed their demurrer to the bill of complaint herein.

The complainant's motion heretofore entered herein for an interlocutory injunction coming on to be heard and having been argued by counsel, and the court, not being advised thereof, takes time.

The demurrer above referred to is as follows:

20 Circuit Court of the United States in and for the District of Kentucky.

LOUISVILLE, HENDERSON & ST. Louis Railroad Co., Complain-t, *vs.* CHARLES C. MCCHORD, JAMES F. Dempsey, and John Wood, Defendants.	The Demurrer of Charles C. McChord, James F. Dempsey, and John C. Wood.

These defendants, Charles C. McChord, James F. Dempsey, and John C. Wood, jointly and severally, not confessing all nor any of the matters in the bill of complaint contained to be true as therein set forth, do demur to said bill for that the same does not state such a case nor contain any matter of equity entitling the complainant to any relief against these defendants or any of them; that this court is without jurisdiction to proceed, hear, or determine the matters set forth in said bill; that the complainant has a full and adequate remedy at law.

Wherefore they pray the judgment of the court whether they shall be compelled to further answer said bill, and further pray to be dismissed with their costs.

ROB'T J. BRECKINRIDGE, JR.
D. W. BAIRD.
AARON KOHN.
ZACK PHELPS.
LOUIS McQUOWN.

I, Louis McQuown, of counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is, in my opinion, well founded in law.

LOUIS McQUOWN.

UNITED STATES OF AMERICA,
District of Kentucky.

I, Charles C. McChord, one of the defendants in the *oge* cause, being duly sworn, do says that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

CHAS. C. McCHORD.

Subscribed and sworn to before me by Charles C. McChord this 13th day of July, 1900.

My com. expires Jan. 13, 1904.

DAVID W. BAIRD,
N. P., J. C., Ky.

21 And on the 16th day of July, 1900, came again the complainant, The Louisville, Henderson & St. Louis Railway Company, by Helm Bruce, counsel, and came also the defendants herein, by Louis McQuown and D. W. Baird, counsel, and the court, being advised of the motion heretofore entered herein to grant to the complainant any interlocutory injunction in accordance with the terms of the prayer of the bill of complaint herein, delivered an opinion in writing, which is filed and ordered to be made a part of the record, and in consideration thereof it is adjudged, ordered, and decreed as follows: That the defendants, C. C. McChord, J. F. Dempsey, and John C. Wood, be, and they are hereby, enjoined and restrained until the further order of the court herein from entertaining any complaint against complainant, or giving any notice of or conducting any hearing against complainant, or fixing any rate, toll, or compensation which the complainant may charge, collect, or receive, or from entering any such rate, toll, or compensation on the record book of their office, or signing the same or mailing any copy thereof to any officer, agent, or employé of the complainant, or from taking any action whatever against or in relation to complainant under said act of March 10th, 1900, entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, and employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribing the manner of enforcing the provisions of this act and penalties for the violation of its provisions," approved on the 10th day of March, 1900.

This order shall take effect upon the complainant's execution of a bond, with good security, to be approved by the clerk, in the penal sum of $1,000, to indemnify the defendants herein against all loss that may result from the issue of the injunction hereby ordered.

And on the 25th day of July, 1900, the following decree was entered :

22 Circuit Court of the United States, Sixth Circuit and District of Kentucky.

JULY 25, 1900.

LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY, Complainant,
vs.
CHARLES. C. MCCHORD ET AL., Defendants.

Final Decree.

And now, on this day, came the complainant, The Louisville, Henderson & St. Louis Railway Company, by Helm Bruce, counsel, and came the defendants, Charles C. McChord, J. F. Dempsey, and John C. Wood, by Robert J. Breckinridge, attorney general of Kentucky; D. W. Baird and Louis McQuown, counsel, and on motion of the said defendants, complainant not objecting thereto, the demurrer to the whole bill heretofore filed herein by the said defendants was by consent of all parties brought on for hearing, and, having been argued by counsel, the court, being advised, considered the said bill to be sufficient and doth adjudge and order that the demurrer thereto be, and the same is, accordingly overruled.

Thereupon the court offered to give and assign time to the said defendants to answer the said bill; but the said defendants, by counsel, declined to answer herein at all and elected to stand by their demurrer.

And thereupon this cause, by consent in open court of all parties, presently came on for hearing in chief, and, all parties submitting this cause for final decree, the court doth order that the said bill of complaint be taken as confessed against the said defendants, and doth further adjudge, order, and decree that the injunction heretofore granted in this cause to restrain the said defendants,

23 Charles C. McChord, J. F. Dempsey, and John C. Wood, from entertaining any complaint against complainant, or giving any notice to or conducting any hearing against complainant, or fixing any rates, toll, or compensation which complainant may charge, collect, or receive, or from entering any such rate, toll, or compensation on the record book of their office, or signing the same or mailing any copy thereof to any officer, agent, or employé of the complainant, or from taking any action whatever against or in relation to the complainant under said act of March 10th, 1900, entitled "An act to prevent railroad companies or corporations owning or operating a line or lines of railroad and its officers, agents, or employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribe the manner of enforcing the provisions of this act and penalties for the violation of its provisions," approved on the 10th day of March, 1900, be, and it is hereby, made perpetual, as well *as* to said named defendants as to their successors in office of the railroad commission of Kentucky and their agents and servants.

And the court doth further order that the said defendants shall pay the costs of the complainant herein incurred.

The said defendants pray an appeal from the foregoing decree to the Supreme Court of the United States, which is accordingly granted upon the execution by them of a bond, with surety, to be approved by the court, in the penal sum of $500, conditioned according to law; and thereupon said defendants presented a bond with David W. Baird as surety thereon, which is approved by the court and ordered to be filed; and then came the complainant and waived service of a citation upon said appeal and consented that no citation thereon should be issued.

24 The petition for appeal above referred to is as follows:

Circuit Court of the United States in and for the District of Kentucky.

LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY, Complainant,
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

Petition on Appeal, with Allowance of Appeal.

To the Hon. Walter Evans, district judge and one of the judges of the above-named court, presiding therein:

The above-named defendants and appellants, Charles C. McChord, James F. Dempsey, and John C. Wood, in the above-entitled cause, conceiving themselves aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause under date of July 25, 1900, wherein and whereby, among other things, it was and is ordered and decreed that these defendants and appellants be perpetually enjoined from proceeding under a statute of the State of Kentucky approved March 10, 1900, to fix any rate against the complainant and appellee as directed and authorized by said statute, do hereby appeal to the Supreme Court of the United States from said order and decree for the reasons set forth in the assignment of errors, which is filed herewith, and they pray that this their petition for their said appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated July 25, 1900.

KOHN & BAIRD,
R. J. BRECKINRIDGE,
ZACK PHELPS, &
LEWIS McQUOWN,
Solicitors for Defendants and Appellants.

Order.

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed and the bond is fixed at $500.00; and thereupon came the counsel for the defendants and appellants in this case and presented their appeal bond in the sum of $500.00, which is approved.

Done in open court this July 25, 1900.

____ ____,

District Judge and One of the Judges of said United States Circuit Court, Presiding Therein.

25 The assignment of errors above referred to is as follows:

Circuit Court of the United States in and for the District of Kentucky.

LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY, Complainant,
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

Come the defendants, Charles C. McChord, James F. Dempsey, and John C. Wood, and file the following assignment of errors upon which they and each of them will rely upon their appeal from the decree made by this honorable court on the 25th day of July, 1900, in the above-entitled cause:

1.

That the United States circuit court in and for the district of Kentucky erred in overruling the demurrer interposed by these defendants and appellants to the original bill filed in said cause.

2.

That the said court erred in rendering judgment against these defendants and appellants in said cause upon the pleadings in said cause, and that said judgment is contrary to the law and the facts, as stated in the bill of complaint in said cause.

3.

That the said court erred in rendering a perpetual order of injunction against these defendants and appellants.

4.

That the said court erred in holding that it had jurisdiction of these defendants and appellants upon the subject-matter set forth in the bill of complaint, and before these defendants and appellants had proceeded under said bill to make or establish any rates against the complainant and appellee.

5.

That the said court erred in holding that under the statute of the State of Kentucky complained of these defendants and appellants act as a judicial body or are delegated judicial powers, contrary to the constitution of the State of Kentucky.

26

6.

That the said court erred in holding that the said statute complained of deprives the complainant and appellee of its property without due process of law or denies to the complainant and appellee the equal protection of the law, as guaranteed by the fourteenth amendment of the Constitution of the United States.

7.

That the said court erred in holding that the said statute complained of attempts to regulate interstate commerce and is in violation of article 1, § 8, of the Constitution of the United States.

8.

That the said court erred in holding that the said statute complained of is void and unconstitutional because it does not provide a judicial hearing for the complainant and appellee with reference to the rates fixed thereunder or after said rates shall have been fixed.

9.

That the said court erred in holding that the said statute complained of is void because it does not provide that the rates which shall be fixed thereunder shall apply to all railroads in the State of Kentucky, and that because of said failure the said statute denies to the complainant and appellee the equal protection of the law.

Wherefore the said defendants and appellants on appeal pray that the judgment of said court be reversed.

KOHN & BAIRD,
R. J. BRECKINRIDGE,
ZACK PHELPS, &
LEWIS McQUOWN,
Counsel for Defendants.

The appeal bond above referred to is as follows:

27 Circuit Court of the United States, District of Kentucky.

LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY
vs.
C. C. McCHORD, J. F. DEMPSEY, & JOHN C. WOOD.

Know all men by these presents that we, C. C. McChord, J. F. Dempsey, John C. Wood, and David W. Baird, are held and firmly bound unto Louisville, Henderson & St. Louis Railway Company in the sum of five hundred dollars, to be paid to the said Louisville, Henderson & St. Louis Railway Company, executors or adminis-

rators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 25th day of July, A. D. 1900.

Whereas the above named C. C. McChord, J. F. Dempsey, and John C. Wood hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named C. C. McChord, J. F. Dempsey, and John C. Wood shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. C. McCHORD,
J. F. DEMPSEY,
JOHN C. WOOD,
By LEWIS McQUOWN, *Att'y.*

Sealed and delivered in presence of—
THOS. SPEED, *Clerk.*

28 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 27 pages contain a true and correct transcript of the record and proceedings in the case of Louisville, Henderson & St. Louis Railway Co. *vs.* C. C. McChord *et al.*, No. 6815, as the same appears from the files and records in my said office.

Witness my hand and seal of said court this 2d day of August, A. D. 1900.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN,
Deputy Clerk.

Endorsed on cover: File No., 17,882. Kentucky C. C. U. S. Term No., 397. Charles C. McChord, James F. Dempsey, and John C. Wood, appellants, *vs.* The Louisville, Henderson & St. Louis Railway Company. Filed August 21st, 1900.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 893 143.

CHARLES C. McCHORD, JAMES F. DEMPSEY, AND JOHN C. WOOD, APPELLANTS,

vs.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED AUGUST 21, 1900.

(17,883.)

(17,883.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 398.

CHARLES C. McCHORD, JAMES F. DEMPSEY, AND JOHN C. WOOD, APPELLANTS,

vs.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 22, 1900.

1 Proceedings of the circuit court of the United States for the district of Kentucky at a regular term begun and held at the Federal court hall, in the city of Louisville, on Monday, February 19th, A. D. 1900.

Present: Hon. Walter Evans, sitting as circuit judge.

CHESAPEAKE & OHIO RAILWAY COMPANY, Complainant,
vs.
C. C. MCCHORD, J. F. DEMPSEY, & JOHN C. WOOD, Defendants. } No. 6816.

Be it remembered that heretofore, to wit, on the 5th day of July, A. D. 1900, came the complainant in the above-entitled cause and filed its bill of complaint herein against the above-named defendants; which said bill of complaint is as follows:

2 In the Circuit Court of the United States in and for the District of Kentucky.

CHESAPEAKE & OHIO RAILROAD COMPANY
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, and JOHN C. WOOD.

To the honorable the judges of the circuit court of the United States in and for the district of Kentucky:

The Chesapeake & Ohio Railroad Company, a corporation created, organized, and existing under and by virtue of the laws of the State of Virgina and a citizen thereof and having its principal place of business in the city of Richmond, in said State, brings this its bill against Charles C. McChord, of Springfield, Washington county, Kentucky; James F. Dempsey, of Madisonville, Hopkins county, Kentucky, and John C. Wood, of Mt. Sterling, Montgomery county, Kentucky, each of whom is a citizen of the State of Kentucky and an inhabitant of the district of Kentucky.

And thereupon your orator complains and says that the amount in controversy herein far exceed- the sum and value of ten thousand dollars, exclusive of interest and costs.

1. That your orator conducts and operates as a common carrier of freight and passengers more than 444 miles of railroad in the State of Kentucky as a part of your orator's system of railroads, of more than 14,444 miles in extent, traversing the States of Maryland, Virginia, West Virginia, Kentucky, and Ohio, which system is operated as a whole; that over its said line in the State of Kentucky it carries a very large traffic, both passengers and freight and both State and interstate, and about 80 per cent. of the traffic passing over its lines in the State of Kentucky is interstate traffic in the strictest sense, and much of the remainder is virtually interstate traffic, the rates upon which have a direct and far-reaching influence upon commerce among the States.

3 2. That defendants herein are holding and exercising the offices of railroad commissioners of the State of Kentucky, having been duly elected thereto and qualified therefor, and as such constitute the railroad commission of said State, and as such claim and unless restrained by the orders of this court will exercise the right to fix rates for the transportation of passengers and property over the various lines of your orator's railroad by virture of an alleged act of the General Assembly of the Commonwealth of Kentucky, which it is claimed became a law on the — day of March, 1900, and took effect on the 12th day of June, 1900, entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, and employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto and prescribing the manner of enforcing the provisions of this act and penalties for the violations of its provisions." The said act consists of five sections in the following words, to wit:

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SEC. 1. When complaint shall be made to the railroad commission accusing any railroad company or corporation of charging, collecting or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, or when said commission shall receive information or have reason to believe that such rate or rates are being charged, collected or received, it shall be the duty of said commission, to hear and determine the matter as speedily as possible. They shall give the company or corporation complained of not less than ten days' notice, by letter mailed to an officer or employé of said company or corporation, stating the time and place of the hearing of same; also the nature of the complaint or matter to be investigated, and shall hear such statements, arguments or evidence offered by the parties as the commission may deem relevant; and should the commission determine that the company or corporation is, or has been guilty of extortion, said commission shall make and fix a just and reasonable rate, toll
4 or compensation which said railroad company or corporation may charge, collect or receive for like services thereafter rendered. The rate, toll or compensation so fixed by the commission shall be entered and be an order on the record book of their office and signed by the commission, and a copy thereof mailed to an officer, agent or employé of the railroad company or corporation affected thereby, and shall be in full force and effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad company or corporation, or any officer, agent, or employee thereof, charge, collect or receive a greater or higher rate, toll, or compensation, for like services thereafter rendered than that made and fixed by said commission, as herein provided, said company or corporation, and said officer, agent or employé, shall each be deemed guilty of extortion, and upon conviction, shall be fined for the first offense

in any sum not less than five hundred dollars nor more than one thousand dollars, and upon a second conviction, in any sum not less than one thousand dollars nor more than two thousand dollars, and for third and succeeding convictions in any sum, not less than two thousand dollars nor more than five thousand dollars.

SEC. 2. The circuit court of any county into or through which the line or lines of road carrying such passenger or freight, owned or operated by said railroad, and the Franklin circuit court, shall have jurisdiction of the offense against the railroad company or corporation offending and the circuit court of the county where such offense may be committed by said officer, agent or employé, shall have jurisdiction in all prosecutions against said officer, agent or employé.

SEC. 3. Prosecutions under this act shall be by indictment.

SEC. 4. All prosecutions under this act shall be commenced within two years after the offense shall have been committed.

SEC. 5. In making said investigation said commission may, when deemed necessary, take the depositions of witnesses before an examiner or notary public, whose fee shall be paid by the State, and upon the certificate of the chairman of the commission, approved by the governor, the auditor shall draw his warrant upon the treasurer for its payment."

5 By said act said railroad commission is authorized and required, when complaint is made or when it receives information or has reason to believe that any railroad company or corporation is charging, collecting, or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, to hear and determine the matter as speedily as possible, and before doing so to mail not less than ten days beforehand a notice to any officer, agent, or employé of said company or corporation—for example, to a brakeman or section hand—stating the time and place of the hearing and the nature of the matter to be investigated.

Said railroad commission is further authorized and required by said act, if upon such investigation made upon such notice it shall determine that said company or corporation is or has been guilty of extortion in the particulars charged, to make and fix, without any notice and without any investigation, what it shall deem to be a just and reasonable rate, toll, or compensation which said company or corporation may thereafter charge, and said rate, toll, or compensation so fixed shall be in full force and effect at the expiration of ten days after the said commission shall have mailed a copy of the order fixing the same to any officer, agent, or employé of the said company or corporation affected thereby—for example, as above stated, such notice may be mailed to a brakeman or section hand—and at all times thereafter said commission may, at any time and without any notice and without any investigation, modify or change the rates thus fixed by it; and if said company or corporation or any of its officers, agents, or employés shall thereafter charge, collect, or receive a greater rate than that made and fixed by said commission, as above stated, said company or corporation and said officers, agents, and employés are each by said act made guilty of extortion

and, upon conviction, are each to be fined for the first offense not less than five hundred dollars nor more than one thousand dollars, and upon a second conviction in any sum not less than one thousand dollars nor more than two thousand dollars, and for third and succeeding convictions in any sum not less than two thousand dollars nor more than five thousand dollars.

6 Thus, under said act, said railroad commission is authorized to fix the rates of your orator and all other railroad companies or corporations without any notice and without any investigation from or by it. The rates so fixed are to go into full force and effect simply by the lapse of ten days from the date of the mailing of the copy of the order fixing the same to any officer, agent, or employé of the railroad company or corporation, and unless the railroad company or corporation affected thereby straightway complies with said rate, although such rate may be a palpable invasion of such company's or corporation's constitutional rights, such corporation will be subject to the excessive fines fixed in said act with respect to each shipment passing over its road to which said commission desires said rates so fixed to apply, and every officer, agent, or employé of said company or corporation either charging, collecting, or receiving the rate fixed and charged by said company or corporation for each of such shipments in question, although the said corporation may have full right and power under the Constitution of the United States to charge such rate, will likewise be subjected to said excessive fines.

7 3. It is the duty of said railroad commission, composed, as aforesaid, of the defendants herein, to see that the laws relating to all railroads, except street, are faithfully executed, and to exercise a general supervision over the railroads of the State. To this end they are authorized and required to inquire into the management of affairs of railroad companies; to inspect and examine their tracks, bridges, tunnels, and other structures; to supervise facilities at stations, and in many other ways to exercise administrative functions with respect to the railroads of said State. The constitution of said State divides the powers of its government into three distinct departments, each to be confined to a separate body of magistracy—those which are legislative to one, those which are executive to another, and those which are judicial to another—and declares that no person or collection of persons being of one of those departments shall exercise any power properly belonging to either of the others, except in the instances expressly directed and permitted in said constitution. By said constitution the judicial power of said State is vested in the senate, when sitting as a court of impeachment, and one supreme court, to be styled the court of appeals, and the courts established by said constitution, to wit, circuit courts, quarterly courts, county courts, justices' courts, police courts, and fiscal courts. The said railroad commission is not established as a court by said constitution and is not expressly directed or permitted by said constitution to exercise any judicial powers; on the contrary, its powers are essentially and purely of an administrative character, and it essentially belongs to the executive department of

the State government. The laws of said State not only fail to confer upon it judicial functions or powers, but prohibit the con-
8 ferring of any such powers upon it, and by reason of the administrative functions with respect to the conduct and regulation of railroads which said commission is required and authorized to perform it is rendered essentially unfit to exercise judicial functions.

4. That at present your orator, like all other common carriers in the State of Kentucky, is authorized and does fix the rates for the transportation by it of passengers and freight, subject to the requirement of law, which operates alike upon all common carriers, that such rates shall be just and reasonable, and your orator is now entitled, as are all other common carriers, to a judicial determination by the duly established courts of the State of any question as to the justice or reasonableness of all or any of such rates which the act aforesaid denies to it. Your orator avers that its rates are just and reasonable and have not been sufficient for many years to give to it a fair return upon the reasonable value of its investment, notwithstanding it has at all times operated its property with the strictest economy and in the most skilful manner. In addition to fixing and charging rates subject to and in conformity with the requirements of law applicable to all common carriers that their rates shall be just and reasonable, your orator is subject to and complies with all the requirements of the laws of the State of Kentucky prohibiting unjust discrimination between individuals and localities in the matter of rates, which laws do not apply to all common carriers, but are unreasonably restricted so as to apply merely to companies or corporations which operate railroads; and, further, your orator is forced to and does recognize the requirements of competition, which constantly tend to reduce rates and which affect not merely rates to or from points known as competitive points, but in a greater or less degree all rates between all points, so as to prevent any rates becoming or remaining unreasonably high.

5. That while all other common carriers, whether operating railroads or not, are subject only to the requirement that their rates are just and reasonable, and in case of controversy are entitled to have the judgment of the courts upon that question, the said act
9 hereinbefore referred to singles out railroad companies or corporations and denies them the equal protection of the laws applying to all other common carriers, and deprives said railroad companies or corporations of any opportunity to have a judicial determination of the reasonableness of their rates when the same are called in question, and substitutes therefor the determination of said railroad commission, which is not and cannot be a court and which does not afford and cannot afford a judicial hearing or determination of questions brought before it; and whereas all other common carriers in the event of a judicial determination by a court of competent jurisdiction that their rates are unreasonable are bound to refund only the excess of such rates over what are just and reasonable rates, and no other penalty or consequences attaches to such judicial determination, yet railroad companies or corpora-

tions are to be subjected, in the absence of any judicial determination as to whether their rates are reasonable or otherwise, and simply upon the determination of said non-judicial tribunal, the railroad commission, that such rates are unreasonable, to the penalty of having the power to make their rates taken out of their hands and vested exclusively in said railroad commission, which commission is then without any hearing, judicial or otherwise, to fix such rates as it may choose, and is thereafter without any notice and without any hearing, judicial or otherwise, to have the right at its pleasure to modify the rates so fixed by it, and if said railroad companies or corporations fail to charge the rates thus fixed for them by this unjust and unconstitutional procedure they will be subjected for every shipment passing over their lines to which said railroad commission may desire said rates so fixed by it to apply to the prosecutions, fines, and penalties imposed in said act.

6. Your orator submits that under the Constitution of the United States it is entitled to charge reasonable rates for the use of its property, and that it cannot be compelled to charge rates fixed by the railroad commission of Kentucky in the absence of a judicial investigation and determination that the rates so fixed are just and reasonable; that the said act makes no provision for any investigation or determination even by the railroad commission that the rates fixed by it are just and reasonable, and the said commission may fix such rates without any notice to the railroad companies or corporations to which said act applies as to what said commission proposes to do and without any investigation of the questions involved, and may thereafter change or modify said rates without any notice or investigation; but that even if said commission should choose to give notice and investigate such questions, such investigation and resulting determination would not satisfy your orator's constitutional rights to a judicial determination, because said commission is not a court, nor is it clothed with judicial functions, but, on the contrary, it is an administrative tribunal, which, under the law, cannot exercise judicial functions, and which, by reason of the functions it does exercise, is in its nature incapable of affording the judicial investigation to which your orator is entitled, and by said act your orator is denied the privilege and right to have it judicially determined by a court of competent jurisdiction whether the rates fixed and charged by it are just and reasonable, and whether the rates fixed by said commission amount to a confiscation and spoliation of its property. If, therefore, defendants be permitted to proceed under said act, your orator will be compelled to charge the rates fixed by them without any opportunity for a judicial investigation and determination as to their reasonableness, and it will then be deprived of the lawful use of its property and of substance and effect of the property itself without due process of law, in violation of section 1 of article 14 of the amendment to the Constitution of the United States; and whereas all other persons in the State of Kentucky but railroad corporations are permitted to receive reasonable profits from their invested cap-

ital, your orator and other railroad companies or corporations will by said act be deprived of the equal protection of the laws.

11 7. That the defendants have called for and obtained from your orator a list of rates fixed and charged by it for transportation of freight and passengers over its railroad in the State of Kentucky for the purpose of considering whether or not said rates in their judgment are unreasonable and extortionate and of fixing rates to be charged by it if they so determine, and it is their intention and purpose to hear complaints under said act, and upon such complaints being made to determine whether the rates complained of are unreasonable and extortionate, and, if they so determine, to fix rates to be charged by it instead of those complained of, and the defendants are giving it out in speeches and interviews that they intend so to proceed and unless restrained by the order of this court they will proceed to act under said act, hear and determine complaints thereunder, and fix such rates as they think your orator should charge, and will thereafter at pleasure modify the rates so fixed, and if your orator does not observe the rates so fixed, no matter how unjustly and unreasonably low, your orator will be subjected to innumerable prosecutions throughout the State of Kentucky for failure to comply with such rates fixed in this unconstitutional manner, and it will be subjected to innumerable suits by consignors and consignees, who will claim the right to ship at said rates so unconstitutionally fixed and to sue for any excess they may be charged over said rates, though rightfully charged, and at the same time all your orator's officers and agents and servants, though perfectly innocent of any offense and though merely assisting your orator to maintain its constitutional rights, will be indicated, prosecuted, and heavily fined, to the great demoralization of the public service which your orator is bound to render, and so it is, unless said defendants are restrained by the order of this court from proceeding under said act, your orator will be deprived of its property without due process of law, denied the equal protection of the law, subjected to great and irreparable wrong and injury and to a vast multiplicity of prosecutions in the courts of the State.

12 Forasmuch as your orator can have no adequate relief except in this court, and to the end that the defendants may, if they can, show why your orator shall not have the relief herein prayed, and that they answer this bill according to the course and practice of the court, but not under oath, the answer of each of them under oath being hereby expressly waived, your orator prays that the said act of March, 1900, be decreed and be declared to be in contravention of the Constitution of the United States, and therefore null and void, and that until the further order of the court said defendants be enjoined from taking any action whatever against or in relation to complainant under said act; that said injunction may be made perpetual upon final hearing, and as irreparable injury to your orator may ensue if defendants should take any action against or in relation to your orator under said act before the motion for a preliminary injunction can be heard, your orator prays that an order be granted restraining defendants from doing the acts herein

sought to be enjoined, and your orator prays for such other and further relief as in equity it may be entitled to, and further prays that your honors also grant unto your orators a writ of subpœna of the United States of America, directed to the said C. C. McChord, J. F. Dempsey, and John C. Wood, commanding them on a day certain to appear and answer this bill and to abide and perform such order and decree as to your honors shall seem meet and equitable; and your orator will ever pray, etc.

WADSWORTH & COCHRAN,
Solicitors for Complainant.

THE UNITED STATES OF AMERICA, *District of Kentucky,* } ss:

On this 2nd day of July, 1900, before me personally appeared W. H. Wadsworth, one of the solicitors of the above-named plaintiff, who made solemn oath that he had read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

WM. T. HALE,
Notary Public, Jefferson County, Ky.

My commission expires Jan. 17, 1904.

13 Upon which bill there is sued the following processes:

The President of the United States of America to Charles C. McChord, James F. Dempsey, and John C. Wood, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America for the district of Kentucky, at the Federal court hall in the city of Louisville, on the first Monday in August next, to answer a bill in equity exhibited against you in our said court by Chesapeake & Ohio Railway Company, which you shall in nowise omit under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court, hereto affixed, at the clerk's office of said court, in Louisville, this 5th day of July, A. D. 1900, and in the 125 year of our Independence.

Attest:

THOS. SPEED,
C. D. C., K. D.,
By HENRY F. CASSIN,
His Deputy.

MEMORANDUM.—The defendants are to enter their appearance in this suit in the clerk's office on or before the 6th day of August next, the day at which the writ is returnable, otherwise the bill may be taken *pro confesso.*

[SEAL.]

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN,
His Deputy.

Upon which the marshal made the following returns:

Executed the within on Charles C. McChord, at his residence, in Springfield, Ky., by delivering to him a true copy of this spa. in cha'y this July 23, 1900.

A. D. JAMES,
U. S. Marshal,
By G. C. THOMPSON,
D. U. S. M.

Came to hand July the 6th, 1900.

A. D. JAMES,
U. D. Marshal,
By LAURENCE YONTS,
Deputy U. S. Marshal for the District of Ky.

Executed on James F. Dempsey by delivering to him a coppy hereof this July the 9th, 1900.

A. D. JAMES,
U. S. Marshal,
By LAURENCE YONTS,
Deputy U. S. Marshal for the District of Ky.

Received the within spa. in ch'y at Frankfort, Kentucky, this 12 day of July, A. D. 1900. Executed this 13th day of July, 1900, at Mt. Sterling, Kentucky, by delivering a true copy of the within spa. in ch'y to John C. Wood.

A. D. JAMES,
U. S. Marshal,
By C. McCARTY, *D. M.*

14 Circuit Court of the United States, Sixth Circuit, District of Kentucky.

CHESAPEAKE & OHIO RAILWAY COMPANY, Complainant,
vs.
C. C. McCHORD, &c., Defendants. } Order.

JULY 9, 1900.

This day came the complainant, by Humphrey, Burnett & Humphrey, and produced herein notices, duly served upon the defendants, that the complainant would upon this day enter the motion for an interlocutory injunction in the terms of the prayer of its bill of complaint herein.

And thereupon came the defendants, by the Honorable Robert J. Breckinridge, attorney general of Kentucky, but nor waiving any objections to the jurisdiction of the court or other objections to the maintenance of conduct of this suit, but expressly reserving the same; and the complainant thereupon moved the court to grant to it an interlocutory injunction in accordance with the terms of the prayer of its bill of complaint herein, to which the defendants objected.

And thereupon, by consent, the said motion is assigned to the 13

day of July, 1900, at ten o'clock a. m., for hearing, it being agreed and so ordered that in the meantime the *status quo* shall be preserved and no effort made by the defendants to enforce against the complainant the terms of the act of the legislature set out in the bill of complaint and commonly known as the McChord law.

The notice above referred to is as follows:

15 Circuit Court of the United States in and for the District of Kentucky.

CHESAPEAKE & OHIO RAILWAY COMPANY, Complainant,
vs.
CHARLES C. McCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants. } Notice.

GENTLEMEN: You are hereby notified that on Monday, July 9, 1900, at or about the hour of ten a. m., the complainant in the above-entitled cause will, before the United States circuit court, sitting at Louisville, Kentucky, move the court for a temporary injunction in accordance with the prayer of its bill of complaint herein this day filed, and a copy of which bill of complaint accompanies this notice, and is to be served upon Charles C. McChord, the chairman of the railroad commission of Kentucky.

Respectfully, WADSWORTH & COCHRAN,
For Comp't.

July 5, 1900.

To Hon. Charles C. McChord, Hon. James F. Dempsey, Hon. John C. Wood.

16 In the Circuit Court of the United States, District of Kentucky.

CHESAPEAKE & OHIO RAILWAY COMPANY, Complainant,
—
CHARLES C. McCHORD, JAMES F. DEMPSEY, and JOHN C. WOOD, Defendants.

E. C. Turner, being duly sworn, states that he served the f-re-ing notice and the bill of complaint therein referred to upon the therein-named Charles C. McChord on the 5th day of July, 1900, by delivering to the said Charles C. McChord, at Springfield, Ky., at 7.45 p. m., on said date, a copy of the said notice and a copy of the said bill of complaint, and that he served the said notice upon the therein-named James F. Dempsey on July 6th, 1900, by delivering to him a copy of said notice at Louisville, Ky., at 9.50 a. m. on said date.

And Thos B. Harrison, Jr., being duly sworn, states that he served the foregoing notice upon the therein-names John C. Wood on July 5th, 1900, by delivering a copy of said notice to said John C. Wood, at Mt. Sterling, Ky., at 9.45 p. m. on said date.

E. C. TURNER.
THOS B. HARRISON, JR.

Subscribed and sworn to before me by E. C. Turner and Thos B. Harrison, Jr., respectfully, this 6th day of July, 1900. My commission expires January 8th, 1903.

G. W. B. OLMSTEAD,
[SEAL.] *Notar- Public, Jefferson Co., Ky.*

17 And on the 13th day of July, 1900, came the complainant, by Wadsworth & Cochran, its counsel.

Came also the defendants, by Louis McQuown and D. W. Baird, their counsel.

The complainant, by said counsel, filed an amended bill of complaint herein.

Came again the defendants, by their said counsel, and filed their demurrer to the bill and amended bill of complaint herein.

The complainant's motion heretofore entered herein for an interlocutory injunction coming on to be heard and having been argued by counsel, and the court, not being advised thereof, takes time.

The amended bill above referred to is as follows:

18 In the Circuit Court of the United States, District of Kentucky.

CHESAPEAKE & OHIO RAILWAY COMPANY, Plaintiff, vs. CHARLES C. MCCHORD, JAMES F. DEMPSEY, and JOHN C. WOOD, Defendants.	6816.	Amended Bill.

And now comes the plaintiff and, with leave of the court first had and obtained, amends *his* bill of complaint herein as follows:

It states by way of amendment of the fourth paragraph of its original bill that its rates are just and reasonable, and the amount received by it from business done by it solely within the State of Kentucky in the transportation of freight and passengers entirely within said State has not been sufficient for many years to give to it a fair return upon the reasonable value of its investment, notwithstanding it has at all times operated its property with the strictest economy and in the most skilful manner. It states further that the amount received by it from its entire business within said State, or both interstate and intrastate traffic, has not been sufficient for many years for that purpose.

And it states further, by way of an additional paragraph to be numbered eighth, that the said act of March, 1900, relates to all freight and passenger rates charged, collected, or received by railroad companies in the Commonwealth of Kentucky, and is not restricted to rates actually charged, collected, and received within the Commonwealth of Kentucky for transportation commencing and ending within the said State, and therefore by its terms is an express and direct interference with and regulation of commerce among the States, inasmuch as by far the greatest part of the freight and passenger rates charged, collected, or received by this plaintiff

within the Commonwealth of Kentucky are interstate rates charged or collected and received within said State for the transportation of passengers and freight between points in other States and points in this State, and therefore the said act is in conflict with paragraph 3 of section 8 of article 1 of the Constitution of the
19 United States, which gives to the Congress of the United States exclusive power to regulate commerce among the States, and which power has been exercised by Congress by an act of February 4th, 1887, entitled "An act to regulate commerce among the States," and by the acts amendatory thereof, and that said act of March, 1900, is therefore null and void. Wherefore it prays as in its original bill.

WADSWORTH & COCHRAN,
Solicitors for Plaintiff.

THE UNITED STATES OF AMERICA, *District of Kentucky*, } *ss:*

On this the 13th day of July, 1900, before me personally appeared W. H. Wadsworth, one of the solicitors of the above-named plaintiff, who made solemn oath that he had read the foregoing amended bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

THOS. SPEED, *Clerk.*

The demurrer above referred to is as follows:

20 Circuit Court of the United States, in the District of Kentucky.

CHESAPEAKE & OHIO RAILWAY Company, Complainant, *vs.* CHARLES C. MCCHORD, JAMES F. Dempsey, John C. Wood, Defendants. } The Demurrer of Charles C. McChord, James F. Dempsey, and John C. Wood.

These defendants, Charles C. McChord, James F. Dempsey, and John C. Wood, jointly and severally, not confessing all nor any of the matters in the bill of complaint contained to be true as therein set forth, do demur to said bill for that the same does not state such a case nor contain any matter of equity entitling the complainant to any relief against these defendants or any of them; that this court is without jurisdiction to proceed, hear, or determine the matters set forth in said bill; that the complainant has a full and adequate remedy at law.

Wherefore they pray the judgment of the court whether they shall

be compelled to further answer said bill, and further pray to be dismissed with their costs.

ROB'T J. BRECKINRIDGE, JR.,
DAVID W. BAIRD,
AARON KOHN,
ZACK PHELPS,
LOUIS McQOUWN, *Counsel for Def'ts.*

I, Louis McQouwn, of counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is, in my opinion, well founded in law.

LOUIS McQOUWN.

UNITED STATES OF AMERICA, }
District of Kentucky. }

I, Charles C. McChord, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

CHAS. C. McCHORD.

Subscribed and sworn to before me by Charles C. McChord this 13th day of July, 1900.
My com. expires Jan. 12, 1904.

DAVID W. BAIRD,
N. P., J. C., Ky.

21 And on the 16th day of July, 1900, came again the complainant, The Chesapeake & Ohio Railway, by Wadswort and Cochran, counsel, and came also the defendants herein, by Louis McQuown and D. W. Baird, counsel, and the court, being advised of the motion heretofore entered herein to grant to the complainant an interlocutory injunction in accordance with the terms of the prayer of the bill of complaint herein, delivered an opinion in writing, which is filed and ordered to be made a part of the record, and in consideration thereof it is adjudged, ordered, and decreed as follows:

That the defendants, C. C. McChord, J. F. Dempsey, and John C. Wood, be, and they are hereby, enjoined and restrained until the further order of the court herein from entertaining any complaint against complainant, or fixing any rate, toll, or compensation which the complainant, may charge, collect, or receive, or from entering any such rate, toll, or compensation on the record book of their office, or signing the same or mailing any copy thereof to any officer, agent, or employé of the complainant, or from taking any action whatever against or in relation to complainant under said act of March 10th, 1900, entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, and employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribing the manner of en-

forcing the provisions of this act and penalties for the violation of its provisions," approved on the 10th day of March, 1900.

This order shall take effect upon the complainant's execution of a bond, with good security, to be approved by the clerk, in the penal sum of $1,000, to indemnify the defendants herein against all loss that may result from the issue of the injunction hereby ordered.

And on the 25th day of July, 1900, the following decree was entered :

22 Circuit Court of the United States, Sixth Circuit and District of Kentucky.

JULY 25, 1900.

CHESAPEAKE & OHIO RAILWAY COMPANY, Complainant,
vs.
CHAS. C. MCCHORD, &c., Defendants.

Final Decree.

And now, on this day, came again the complainant, The Chesapeake & Ohio Railway Company, by Wadsworth & Cochran, counsel, and came the defendants, Chas. C. McChord, J. F. Dempsey, and John C. Wood, by Robert J. Breckinridge, attorney general of Kentucky; D. W. Baird and Louis McQuown, counsel, and on motion of the said defendants, complainant not objecting thereto, the demurrer to the whole bill heretofore filed herein by the said defendants by consent of all parties was brought on for hearing, and having been argued by counsel and the court, being advised, considered the said bill to be sufficient and doth adjudge and order that the demurrer thereto be, and the same is, accordingly overruled.

And thereupon the court offered to give and assign time to the said defendants to answer the said bill; but the said defendants, by counsel, declined to answer herein at all and elected to stand by their demurrer.

And thereupon this cause, by consent in open court of all parties, presently came on for hearing in chief, and all parties submitting this cause for final decree, the court doth order that the said bill of complaint be taken as confessed against the said defendants, and doth further adjudge, order, and decree that the injunction
23 heretofore granted in this cause to restrain the said defendants, Chas. C. McChord, J. F. Dempsey, and John C. Wood, from entertaining any complaint against complainant, or giving any notice to or conducting any hearing against complainant, or fixing any rates, toll, or compensation which complainant may charge, collect, or receive, or from entering any such rate, toll, or compensation on the record book of their office, or signing the same or mailing any copy thereof to any officer, agent, or employé of the complainant, or from taking any action whatever against or in relation to the complainant under said act of March 10, 1900, entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agants, or em-

ployés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribe the manner of enforcing the provisions of this act and penalties for the violation of its provisions," approved on the 10th day of March, 1900, be, and it is hereby, made perpetual, as well *as* to said named defendants as to their successors in office of the railroad commission of Kentucky and their agents and servants.

And the court doth further order that the said defendants shall pay the costs of the complainant herein incurred.

The said defendants pray an appeal from the foregoing decree to the Supreme Court of the United States, which is accordingly granted upon the execution by them of a bond, with surety, to be approved by the court, in the penal sum of $500, conditioned according to law; and thereupon said defendants presented a bond with David W. Baird as surety thereon, which is approved by the court and ordered to be filed; and then came the complainant and waived service of citation upon said appeal and consented that no citation thereon should be issued.

24 The petition for appeal above referred to is as follows:

Circuit Court of the United States in and for the District of Kentucky.

CHESAPEAKE & OHIO RAILWAY COMPANY, Complainant,
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

Petition on Appeal, with Allowance of Appeal.

To the Honorable Walter Evans, district judge and one of the judges of the above-named court, presiding therein:

The above-named defendants and appellants, Charles C. McChord, James F. Dempsey, and John C. Wood, in the above-entitled cause, conceiving themselves aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause under date of July 25, 1900, wherein and whereby, among other things, it was and is ordered and decreed that these defendants and appellants be perpetually enjoined from proceeding under a statute of the State of Kentucky approved March 10, 1900, to fix any rate against the complainant and appellee as directed and authorized by said statute, do hereby appeal to the Supreme Court of the United States from said order and decree for the reasons set forth in the assignment of errors, which is filed herewith, and they pray that this their petition for their said appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which

said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated July 25, 1900.

KOHN & BAIRD,
R. J. BRECKINRIDGE,
ZACK PHELPS, &
LEWIS McQUOWN,
Solicitors for Defendants and Appellants.

Order.

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed and the bond is fixed at $500.00; and thereupon came the counsel for the defendants and appellants in this case and presented their appeal bond in the sum of $500.00, which is approved.

Done in open court this July 25, 1900.

——— ———,
District Judge and One of the Judges of said United States Circuit Court, Presiding Therein.

The assignment of errors above referred to is as follows:

25 Circuit Court of the United States in and for the District of Kentucky.

CHESAPEAKE & OHIO RAILWAY COMPANY, Complainant,
vs.
CHARLES C. McCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

Come the defendants, Charles C. McChord, James F. Dempsey, and John C. Wood, and file the following assignment of errors upon which they and each of them will rely upon their appeal from the decree made by this honorable court on the 25th day of July, 1900, in the above-entitled cause:

1.

That the United States circuit court in and for the district of Kentucky erred in overruling the demurrer interposed by these defendants and appellants to the original bill filed in said cause.

2.

That the said court erred in rendering judgment against these defendants and appellants in said cause upon the pleadings in said cause, and that said judgment is contrary to the law and the facts, as stated in the bill of complaint in said cause.

3.

That the said court erred in rendering a perpetual order of injunction against these defendants and appellants.

4.

That the said court erred in holding that it had jurisdiction of these defendants and appellants upon the subject-matter set forth in the bill of complaint, and before these defendants and appellants had proceeded under said bill to make or establish any rates against the complainant and appellee.

5.

That the said court erred in holding that under the statute of the State of Kentucky complained of these defendants and appellants act as a judicial body or are delegated judicial powers, contrary to the constitution of the State of Kentucky.

26

6.

That the said court erred in holding that the said statute complained of deprives the complainant and appellee of its property without due process of law or denies to the complainant and appellee the equal protection of the law, as guaranteed by the fourteenth amendment of the Constitution of the United States.

7.

That the said court erred in holding that the said statute complained of attempts to regulate interstate commerce and is in violation of article I, § 8, of the Constitution of the United States.

8.

That the said court erred in holding that the said statute complained of is void and unconstitutional because it does not provide a judicial hearing for the complainant and appellee with reference to the rates fixed thereunder or after said rates shall have been fixed.

9.

That the said court erred in holding that the said statute complained of is void because it does not provide that the rates which shall be fixed thereunder shall apply to all railroads in the State of Kentucky, and that because of said failure the said statute denies to the complainant and appellee the equal protection of the law.

Wherefore the said defendants and appellants on appeal pray that the judgment of said court be reversed.

KOHN & BAIRD,
R. J. BRECKINRIDGE,
ZACK PHELPS, &
LEWIS McQUOWN,
Counsel for Defendants.

The appeal bond above referred to is as follows:

27 Circuit Court of the United States, District of Kentucky.

CHESAPEAKE & OHIO RAILWAY
vs.
C. C. McCHORD, J. F. DEMPSEY, and JOHN C. WOOD.

Know all men by these presents that we, C. C. McChord, J. F. Dempsey, John C. Wood, and David W. Baird, are held and firmly bound unto Chesapeake & Ohio Railway in the sum of five hundred dollars, to be paid to the said Chesapeake & Ohio Railway, executors or admininistrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 25 day of July, A. D. 1900.

Whereas the above-named C. C. McChord, J. F. Dempsey, and John C. Wood hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named C. C. McChord, J. F. Dempsey, and John C. Wood shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. C. McCHORD. [L. S.]
J. F. DEMPSEY. [L. S.]
JOHN C. WOOD, [L. S.]
By LOUIS M. McQUOWN, *Att'y.*
DAVID W. BAIRD. [L. S.]

Sealed and delivered in presence of—
THOS. SPEED, *Clerk.*

28 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 27 pages contain a true and correct transcript of the record and proceedings in the case of Chesapeake & Ohio Railway Company *vs.* C. C. McChord *et al.*, No. 6816, as the same appears from the files and records in my said office.

Witness my hand and seal of said court this 2 day of August, A. D. 1900.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN,
Deputy Clerk.

Endorsed on cover: File No., 17,883. Kentucky C. C. U. S. Term No., 398. Charles C. McChord, James F. Dempsey, and John C. Wood, appellants, *vs.* The Chesapeake & Ohio Railway Company. Filed August 21st, 1900.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 189 144.

CHARLES C. McCHORD, JAMES F. DEMPSEY, AND JOHN C. WOOD, APPELLANTS,

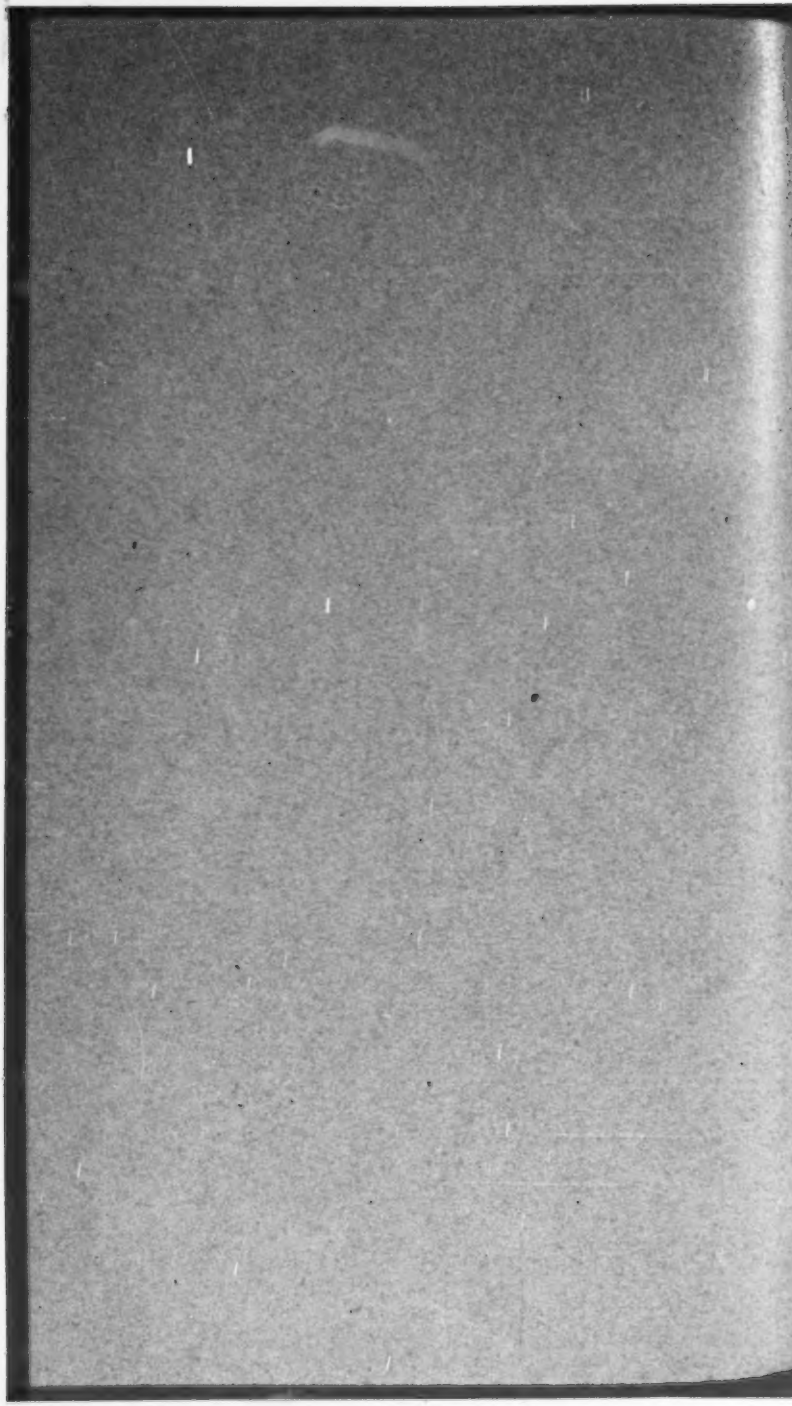
vs.

THE SOUTHERN RAILWAY COMPANY IN KENTUCKY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED AUGUST 21, 1900.

(17,884.)



(17,884.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 399.

CHARLES C. McCHORD, JAMES F. DEMPSEY, AND JOHN C. WOOD, APPELLANTS,

vs.

THE SOUTHERN RAILWAY COMPANY IN KENTUCKY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 22, 1900.

1 Proceedings of the circuit court of the United States for the district of Kentucky at a regular term begun and held at the Federal court hall, in the city of Louisville, on Monday, February 19th, A. D. 1900.

Present: Hon. Walter Evans, sitting as circuit judge.

SOUTHERN RAILWAY COMPANY IN KENTUCKY, Complainant,
vs.
C. C. MCCHORD, J. F. DEMPSEY, and JOHN C. WOOD, Defendants. } No. 6817.

Be it remembered that heretofore, to wit, on the 5th day of July, A. D. 1900, came the complainant in the above-entitled cause and filed its bill of complaint herein against the defendants above named; which said bill of complaint is as follows:

2 Circuit Court of the United States in and for the District of Kentucky.

SOUTHERN RAILWAY COMPANY IN KENTUCKY, Complainant,
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

To the honorable the judges of the circuit court of the United States on and for the district of Kentucky:

The Southern Railway Company in Kentucky, a corporation created, organized, and existing under and by virtue of the law- of the State of Kentucky and having its principal place of business in the city of Louisville, in said State, brings this its bill of complaint against Charles C. McChord, of Springfield, Washington county, Kentucky; James F. Dempsey, of Madisonville, Hopkins county, Kentucky, and John C. Wood, of Mount Sterling, Montgomery county, Kentucky, each of whom is a citizen of the State of Kentucky and an inhabotant of the district of Kentucky; and thereupon your orator complains and says that the amount in controversy herein far exceeds the sum and value of ten thousand dollars, exclusive of interest and costs.

1. That your orator conducts and operates as a common carrier of freight and passengers more than 122 miles of railroad in the State of Kentucky; that over its said line it carries a very large traffic, both passengers and freight, and both State and interstate, and about 80 per cent. of the traffic passing over its lines in the State of Kentucky is interstate traffic in the strictest sense, and much of the remainder is virtually interstate traffic, the rates upon which have a direct and far-reaching influence upon commerce among the States.

3 2. That the defendants herein are holding and exercising the offices of railroad commissioners of the State of Kentucky,

having been duly elected thereto and qualified therefor, and as such constitute the railroad commission of said State, and as such claim and unless restrained by the orders of this court will exercise the right to fix rates for the transportation of passengers and property over the various lines of your orator's railroad by virture of an alleged act of the General Assembly of the Commonwealth of Kentucky, which it is claimed became a law on the — day of March, 1900, and took effect on the 12th day of June, 1900, entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, and employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto and prescribing the manner of enforcing the provisions of this act and penalties for the violations of its provisions." The said act consists of five sections in the following words, to wit:

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SEC. 1. When complaint shall be made to the railroad commission accusing any railroad company or corporation of charging, collecting or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, or when said commission shall receive information or have reason to believe that such rate or rates are being charged, collected or received, it shall be the duty of said commission, to hear and determine the matter as speedily as possible. They shall give the company or corporation complained of not less than ten days' notice, by letter mailed to an officer or employé of said company or corporation, stating the time and place of the hearing of same; also the nature of the complaint or matter to be investigated, and shall hear such statements, arguments or evidence offered by the parties as the commission may deem relevant; and should the commission determine that the company or corporation is, or has been, guilty of extortion, said commission shall make and fix a just and reasonable rate, toll
4 or compensation which said railroad company or corporation may charge, collect or receive for like services thereafter rendered. The rate, toll or compensation so fixed by the commission shall be entered and be an order on the record book of their office and signed by the commission, and a copy thereof mailed to an officer, agent or employé of the railroad company or corporation affected thereby, and shall be in full force and effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad company or corporation, or any officer, agent, or employee thereof, charge, collect or receive a greater or higher rate, toll, or compensation, for like services thereafter rendered than that made and fixed by said commission, as herein provided, said company or corporation, and said officer, agent or employé, shall each be deemed guilty of extortion, and upon conviction, shall be fined for the first offense in any sum not less than five hundred dollars nor more than one thousand dollars, and upon a second conviction, in any sum not less

than one thousand dollars nor more than two thousand dollars, and for third and succeeding convictions in any sum, not less than two thousand dollars nor more than five thousand dollars.

SEC. 2. The circuit court of any county into or through which the line or lines of road carrying such passenger or freight, owned or operated by said railroad, and the Franklin circuit court, shall have jurisdiction of the offense against the railroad company or corporation offending and the circuit court of the county where such offense may be committed by said officer, agent or employé, shall have jurisdiction in all prosecutions against said officer, agent or employé.

SEC. 3. Prosecutions under this act shall be by indictment.

SEC. 4. All prosecutions under this act shall be commenced within two years after the offense shall have been committed.

SEC. 5. In making said investigation said commission may, when deemed necessary, take the depositions of witnesses before an examiner or notary public, whose fee shall be paid by the State, and upon the certificate of the chairman of the commission, approved by the governor, the auditor shall draw his warrant upon the treasurer for its payment."

5 By said act said railroad commission is authorized and required, when complaint is made or when it receives information or has reason to believe that any railroad company or corporation is charging, collecting, or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, to hear and determine the matter as speedily as possible, and before doing so to mail not less than ten days beforehand a notice to any officer, agent, or employé of said company or corporation—for example, to a brakeman or section hand—stating the time and place of the hearing and the nature of the matter to be investigated.

Said railroad commission is further authorized and required by said act, if upon such investigation made upon such notice it shall determine that said company or corporation is or has been guilty of extortion in the particulars charged, to make and fix, without any notice and without any investigation, what it shall deem to be a just and reasonable rate, toll, or compensation which said company or corporation may thereafter charge, and said rate, toll, or compensation so fixed shall be in full force and effect at the expiration of ten days after the said commission shall have mailed a copy of the order fixing the same to any officer, agent, or employé of the said company or corporation affected thereby—for example, as above stated, such notice may be mailed to a brakeman or section hand—and at all times thereafter said commission may, at any time and without any notice and without any investigation, modify or change the rates thus fixed by it; and if said company or corporation or any of its officers, agents, or employés shall thereafter charge, collect, or receive a greater rate than that made and fixed by said commission, as above stated, said company or corporation and said officers, agents, and employés are each by said act made guilty of extortion and, upon conviction, are each to be fined for the first offense not less than five hundred dollars nor more than one thousand dollars,

and upon a second conviction in any sum not less than one thousand dollars nor more than two thousand dollars, and for third and succeeding convictions in any sum not less than two thousand dollars nor more than five thousand dollars.

6 Thus, under said act, said railroad commission is authorized to fix the rates of your orator and all other railroad companies or corporations without any notice and without any investigation from or by it. The rates so fixed are to go into full force and effect simply by the lapse of ten days from the date of the mailing of the copy of the order fixing the same to any officer, agent, or employé of the railroad company or corporation, and unless the railroad company or corporation affected thereby straightway complies with said rate, although such rate may be a palpable invasion of such company's or corporation's constitutional rights, such corporation will be subject to the excessive fines fixed in said act with respect to each shipment passing over its road to which said commission desires said rates so fixed to apply, and every officer, agent, or employé of said company or corporation either charging, collecting, or receiving the rate fixed and charged by said company or corporation for each of such shipments in question, although the said corporation may have full right and power under the Constitution of the United States to charge such rate, will likewise be subjected to said excessive fines.

7 3. It is the duty of said railroad commission, composed, as aforesaid, of the defendants herein, to see that the laws relating to all railroads, except street, are faithfully executed, and to exercise a general supervision over the railroads of the State. To this end they are authorized and required to inquire into the management of affairs of railroad companies; to inspect and examine their tracks, bridges, tunnels, and other structures; to supervise facilities at stations, and in many other ways to exercise administrative functions with respect to the railroads of said State. The constitution of said State divides the powers of its government into three distinct departments, each to be confined to a separate body of magistracy—those which are legislative to one, those which are executive to another, and those which are judicial to another—and declares that no person or collection of persons being of one of those departments shall exercise any power properly belonging to either of the others, except in the instances expressly directed and permitted in said constitution. By said constitution the judicial power of said State is vested in the senate, when sitting as a court of impeachment, and one supreme court, to be styled the court of appeals, and the courts established by said constitution, to wit, circuit courts, quarterly courts, county courts, justices' courts, police courts, and fiscal courts. The said railroad commission is not established as a court by said constitution and is not expressly directed or permitted by said constitution to exercise any judicial powers; on the contrary, its powers are essentially and purely of an administrative character, and it essentially belongs to the executive department of the State government. The laws of said State not only fail to confer

upon it judicial functions or powers, but prohibit the con-
8 ferring of any such powers upon it, and by reason of the administrative functions with respect to the conduct and regulation of railroads which said commission is required and authorized to perform it is rendered essentially unfit to exercise judicial functions.

4. That at present your orator, like all other common carriers in the State of Kentucky, is authorized and does fix the rates for the transportation by it of passengers and freight, subject to the requirement of law, which operates alike upon all common carriers; that such rates shall be just and reasonable, and your orator is now entitled, as are all other common carriers, to a judicial determination by the duly established courts of the State of any question as to the justice or reasonableness of all or any of such rates, which the act aforesaid denies to it. Your orator avers that its rates are just and reasonable and have not been sufficient for many years to give to it a fair return upon the reasonable value of its investment, notwithstanding it has at all times operated its property with the strictest economy and in the most skilful manner. In addition to fixing and charging rates subject to and in conformity with the requirements of law applicable to all common carriers that their rates shall be just and reasonable, your orator is subject to and complies with all the requirements of the laws of the State of Kentucky prohibiting unjust discrimination between individuals and localities in the matter of rates, which laws do not apply to all common carriers, but are unreasonably restricted so as to apply merely to companies or corporations which operate railroads; and, further, your orator is forced to and does recognize the requirements of competition, which constantly tend to reduce rates and which affect not merely rates to or from points known as competitive points, but in a greater or less degree, all rates between all points, so as to prevent any rates becoming or remaining unreasonably high.

5. That while all other common carriers, whether operating railroads or not, are subject only to the requirement that their rates are just and reasonable, and in case of controversy are entitled to have the judgment of the courts upon that question, the said act here-
9 inbefore referred to singles out railroad companies or corporations and denies them the equal protection of the laws applying to all other common carriers, and deprives said railroad companies or corporations of any opportunity to have a judicial determination of the reasonableness of their rates when the same are called in question, and substitutes therefor the determination of said railroad commission, which is not and cannot be a court and which does not afford and cannot afford a judicial hearing or determination of questions brought before it; and whereas all other common carriers in the event of a judicial determination by a court of competent jurisdiction that their rates are unreasonable are bound to refund only the excess of such rates over what are just and reasonable rates, and no other penalty or consequence attaches to such judicial determination, yet railroad companies or corporations are to be subjected, in the absence of any judicial determination

as to whether their rates are reasonable or otherwise, and simply upon the determination of said non-judicial tribunal, the railroad commission, that such rates are unreasonable, to the penalty of having the power to make their rates taken out of their hands and vested exclusively in said railroad commission, which commission is then without any hearing, judicial or otherwise, to fix such rates as it may choose, and is thereafter without any notice and without any hearing, judicial or otherwise, to have the right at its pleasure to modify the rates so fixed by it, and if said railroad companies or corporations fail to charge the rates thus fixed for them by this unjust and unconstitutional procedure they will be subjected for every shipment passing over their lines to which said railroad commission may desire said rates so fixed by it to apply to the prosecutions, fines, and penalties imposed in said act.

6. Your orator submits that under the Constitution of the United States it is entitled to charge reasonable rates for the use of its property, and that it cannot be compelled to charge rates fixed by the railroad commission of Kentucky in the absence of a judicial investigation and determination that the rates so fixed are just and reasonable; that the said act makes no provision for any investigation or determination even by the railroad commission that the rates fixed by it are just and reasonable, and the said commission may fix such rates without any notice to the railroad companies or corporations to which said act applies as to what said commission proposes to do and without any investigation of the questions involved, and may thereafter change or modify said rates without any notice or investigation; but that even if said commission should choose to give notice and investigate such questions, such investigation and resulting determination would not satisfy your orator's constitutional rights to a judicial determination, because said commission is not a court, nor is it clothed with judicial functions, but, on the contrary, it is an administrative tribunal, which, under the law, cannot exercise judicial functions, and which, by reason of the functions it does exercise, is in its nature incapable of affording the judicial investigation to which your orator is entitled, and by said act your orator is denied the privilege and right to have it judicially determined by a court of competent jurisdiction whether the rates fixed and charged by it are just and reasonable, and whether the rates fixed by said commission amount to a confiscation and spoliation of its property. If, therefore, defendants be permitted to proceed under said act, your orator will be compelled to charge the rates fixed by them without any opportunity for a judicial investigation and determination as to their reasonableness, and it will then be deprived of the lawful use of its property and of substance and effect of the property itself without due process of law, in violation of section 1 of article 14 of the amendment- to the Constitution of the United States; and whereas all other persons in the State of Kentucky but railroad corporations are permitted to receive reasonable profits from their invested capital, your orator and other railroad companies or corporations will by said act be deprived of the equal protection of the laws.

11 7. Your orator further states that the said act of March, 1900, relates to all freight and passenger rates charged, collected, or received by railroad companies in the Commonwealth of Kentucky, and is not restricted to the rates actually charged, collected, and received, within the Commonwealth of Kentucky, for transportation commencing and ending within the said State, and therefore by its terms is an express and direct interference with and regulation of commerce among the States; that your orator's line of railroad is largely used in the transportation of interstate commerce, your orator's line forming, with other lines in the State of Kentucky and outside of the State of Kentucky, through lines of travel and transportation from many States of the Union, and your orator receiving and charging for such through transportation a part of the through rate. The said through transportation consists not only of transportation from points in Kentucky to points outside of Kentucky, but from points outside of Kentucky to other points outside of Kentucky. Your orator is thus engaged in interstate traffic, and the said act, in that, without discrimination, it authorizes the fixing of through rates or the proportion of through rates, as well as strictly infrastate rates, is unconstitutional and void because it is in conflict with paragraph 3 of section 8 of article 1 of the Constitution of the United States, which gives to the Congress of the United States exclusive power to regulate commerce among the States, which power has been exercised by Congress by an act of February 4, 1887, entitled "An act to regulate commerce among the States," and acts amendatory thereof.

And so it is that said act of March, 1900, is for this reason also null and void.

12 8. That the defendants have called for and obtained from your orator a list of rates fixed and charged by it for transportation of freight and passengers over its railroad in the State of Kentucky for the purpose of considering whether or not said rates in their judgment are unreasonable and extortionate and of fixing rates to be charged by it, if they so determine, and it is their intention and purpose to hear complaints under said act, and, upon such complaints being made, to determine whether the rates complained of are unreasonable and extortionate, and, if they so determine, to fix rates to be charged by it instead of those complained of, and the defendants are giving it out in speeches and interviews that they intend so to proceed, and unless restrained by the order of this court they will proceed to act under said act, hear and determine complaints thereunder, and fix such rates as they think your orator should charge, and will thereafter at pleasure modify the rates so fixed, and if your orator does not observe the rates so fixed, no matter how unjustly and unreasonably low, your orator will be subjected to innumerable prosecutions throughout the State of Kentucky for failure to comply with such rates fixed in this unconstitutional manner, and it will be subjected to innumerable suits by consignors and consignees, who will claim the right to ship at said rates so unconstitutionally fixed and to sue for any excess they may be charged over said rates, though rightfully charged, and at the same

time all your orator's officers and agents and servants, though perfectly innocent of any offense and though merely assisting your orator to maintain its constitutional rights, will be indicated, prosecuted, and heavily fined, to the great demoralization of the public service which your orator is bound to render, and so it is, unless said defendants are restrained by the order of this court from proceeding under said act, your orator will be deprived of its property without due process of law, denied the equal protection of the law, subjected to great and irreparable wrong and injury and to a vast multiplicity of prosecutions in the courts of the State.

13 Forasmuch as your orator can have no adequate relief except in this court, and to the end that the defendants may, if they can, show why your orator shall not have the relief herein prayed, and that they answer this bill according to the course and practice of the court, but not under oath, the answer of each of them under oath being hereby expressly waived, your orator prays that the said act of March, 1900, be decreed and be declared to be in contravention of the Constitution of the United States, and therefore null and void, and that until the further order of the court said defendants be enjoined from taking any action whatever against or in relation to complainant under said act; that said injunction may be made perpetual upon final hearing, and as irreparable injury to your orator may ensue if defendants should take any action against or in relation to your orator under said act before the motion for a preliminary injunction can be heard, your orator prays that an order be granted restraining defendants from doing the acts herein sought to be enjoined, and your orator prays for such other and further relief as in equity it may be entitled to, and further prays that your honors also grant unto your orators a writ of subpœna of the United States of America, directed to the said C. C. McChord, J. F. Dempsey, and John C. Wood, commanding them on a day certain to appear and answer this bill and to abide and perform such order and decree as to your honors shall seem meet and equitable; and your orator will ever pray, etc.

HUMPHREY, BURNETT & HUMPHREY,
Solicitors for Complainant.

THE UNITED STATES OF AMERICA, }
District of Kentucky, } *ss:*

On this 5th day of July, 1900, before me personally appeared H. B. Spencer, superintendent of the above-named plaintiff, who made solemn oath that he had read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

R. A. BATMAN,
N. P. J. Co., Ky.

My commission expires at the end of the next session of the senate.

14 Upon which bill there issued the following processes:

The President of the United States of America to Charles C. McChord, James F. Dempsey, and John C. Wood, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America for the district of Kentucky, at the Federal court hall, in the city of Louisville, on the first Monday in August next, to answer a bill in equity exhibited against you in our said court by Southern Railway Co. in Kentucky, which you shall in nowise omit under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, hereto affixed, this 5th day of July, A. D. 1900, and in the 125 year of our Independence.

Attest:

THOS. SPEED,
C. C. C., K. D.,
By HENRY F. CASSIN,
His Deputy.

MEMORANDUM.—The defendants are to enter their appearance in the suit in the clerk's office on or before the 6th day of August next, the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN,
His Deputy.

Upon which the marshal made the following returns:

Executed the within on Charles C. McChord, at his residence, in Springfield, Ky., by delivering to him a true copy of this spa. in ch'y this July 23, 1900.

A. D. JAMES, *U. S. Marshal,*
By G. C. THOMPSON, *D. U. S. M.*

Came to hand July the 6th, 1900.

A. D. JAMES, *U. S. Marshal*
By LAURENCE YONTS,
Deputy U. S. Marshal for District of Ky.

Executed the within on James F. Dempsey by delivering to him a copy hereof this July the 9th, 1900.

A. D. JAMES,
U. S. Marshal,
By LAURENCE YONTS,
Deputy U. S. Marshal.

Received the within spa. in ch'y, at Frankfort, Kentucky, this 18 day of June, A. D. 1900. Executed this 13th day of July, 1900, at Mt. Sterling, Kentucky, by delivering a true copy of the within spa. in ch'y to John C. Wood.

A. D. JAMES,
U. S. Marshal,
By C. McCARTY, *D. M.*

15 Circuit Court of the United States, Sixth Circuit, District of Kentucky.

JULY 9, 1900.

SOUTHERN RAILWAY COMPANY IN KENTUCKY, Complainant,
vs.
C. C. MCCHORD, &c., Defendants. } Order.

This day came the complainant, by Humphrey, Burnet & Humphrey, and produced herein notices, duly served upon the defendants, that the complainant would upon this day enter the motion for an interlocutory injunction in the terms of the prayer of its bill of complaint herein.

And thereupon came the defendants, by the Honorable Robert J. Breckinridge, attorney general of Kentucky, but not waiving any objections to the jurisdiction of the court or other objections to the maintenance or conduct of this suit, but expressly reserving the same; and the complainant thereupon moved the court to grant to it an interlocutory injunction in accordance with the *the* terms of the prayer of its bill of complaint herein; to which the defendants objected.

And thereupon, by consent, the said motion is assigned to the 13 day of July, 1900, at ten o'clock a. m., for hearing, it being agreed and so ordered that in the meantime the *status quo* shall be preserved and no effort made by the defendants to enforce against the complainant the terms of the act of the legislature set out in the bill of complaint and commonly known as the McChord law.

The notice above referred to is as follows:

16 Circuit Court of the United States in and for the District of Kentucky.

SOUTHERN RAILWAY COMPANY IN KENTUCKY, Complainants,
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants. } Notice.

GENTLEMEN: You are hereby notified that on Monday, July 9, 1900, at or about the hour of ten a. m., the complainant in the above-entitled cause will, before the United States circuit court, sitting at Louisville, Kentucky, move the court for a temporary injunction in accordance with the prayer of its bill of complaint herein this day filed, and a copy of which bill of complaint accompanies this notice and is to be served upon Charles C. McChord, the chairman of the railroad commission of Kentucky.

July 5, 1900.

Respectfully,
HUMPHREY, BURNETT & HUMPHREY, *For Comp't.*

To Hon. Charles C. McChord, Hon. James F. Dempsey, Hon. John C. Wood.

17 In the Circuit Court of the United States, District of Kentucky.

SOUTHERN RAILWAY COMPANY OF KENTUCKY, Complainant,
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, and JOHN C. WOOD, Defendants.

E. C. Turner, being duly sworn, states that he served the fore-ing notice and the bill of complaint therein referred to upon the therein-named Charles C. McChord on the 5th day of July, 1900, by delivering to the said Charles C. McChord, at Springfield, Ky., at 7.45 p. m., on said date, a copy of the said notice and a copy of the said bill of complaint, and that he served the said notice upon the therein-named James F. Dempsey on July 6th, 1900, by delivering to him a copy of said notice at Louisville, Ky., at 9.50 a. m. on said date.

And Thos. B. Harrison, Jr., being duly sworn, states that he served the foregoing notice upon the therein-names John C. Wood on July 5th, 1900, by delivering a copy of said notice to said John C. Wood, at Mt. Sterling, Ky., at 9.45 p. m. on said date.

E. C. TURNER.
THOS. B. HARRISON, JR.

Subscribed and sworn to before me by E. C. Turner and Thos. B. Harrison, Jr., respect*ful*ly, this 6th day of July, 1900. My commission expires January 8th, 1903.

[SEAL.]

G. W. B. OLMSTEAD,
Notar- Public, Jefferson Co., Ky.

18 And on the 13th day of July, 1900, came the complainant, by Humphrey, Burnett & Humphrey, its counsel.

Came also the defendants, by Louis McQuown and D. W. Baird, their counsel, and filed their demurrer to the bill of complaint herein.

The complainant's motion heretofore entered herein for an interlocutory injunction coming on to be heard and having been argued by counsel, and the court, not being advised thereof, takes time.

The demurrer above referred to is as follows:

19 Circuit Court of the United States in the District of Kentucky.

SOUTHERN RAILWAY IN KENTUCKY, Complainant,
vs.
CHARLES C. MCCHORD, JAMES F. Dempsey, John C. Wood, Defendants.

The Demurrer of Charles C. McChord, James F. Dempsey, and John C. Wood.

These defendants, Charles C. McChord, James F. Dempsey, and John C. Wood, jointly and severally, not confessing all nor any of the matters in the bill of complaint contained to be true as therein

set forth, do demur to said bill for that the same does not state such a case nor contain any matter of equity entitling the complainant to any relief against these defendants or any of them; that this court is without jurisdiction to proceed, hear, or determine the matters set forth in said bill; that the complainant has a full and adequate remedy at law.

Wherefore they pray the judgment of the court whether they shall be compelled to further answer said bill, and further pray to be dismissed with their costs.

ROB'T J. BRECKINRIDGE, JR.,
DAVID W. BAIRD,
AARON KOHN,
ZACK PHELPS,
LOUIS McQOUWN.
Counsel for Def'ts.

I, Louis McQouwn, of counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is, in my opinion, well founded in law.

LOUIS McQOUWN.

UNITED STATES OF AMERICA, }
District of Kentucky. }

I, Charles C. McChord, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

CHAS. C. McCHORD.

Subscribed and sworn to before me by Charles C. McChord this 13th day of July, 1900.

My com. expires Jan. 12, 1904.

DAVID W. BAIRD,
N. P., J. C., Ky.

20 And on the 16th day of July, 1900, came again the complainant, The Southern Railway Company in Kentucky, by Alex. P. Humphrey, counsel, and came also the defendants herein, by Lewis McQuown and D. W. Baird, counsel, and the court, being advised of the motion heretofore entered herein to grant to the complainant an interlocutory injunction in accordance with the terms of the prayer of the bill of complaint herein, delivered an opinion in writing, which is filed and ordered to be made a part of the record, and in consideration thereof it is adjudged, ordered, and decreed as follows: That the defendants, C. C. McChord, J. F. Dempsey, and John C. Wood, be, and they are hereby, enjoined and restrained until the further order of the court herein from entertaining any complaint against complainant, or giving any notice of or conducting any hearing against complainant, or fixing any rate, toll, or compensation which the complainant may charge, collect, or receive, or from entering any such rate, toll, or compensation on the record book of their office, or signing the same or mailing any copy thereof to any officer,

agent, or employé of the complainant, or from taking any action whatever against or in relation to complainant under said act of March 10th, 1900, entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, and employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribing the manner of enforcing the provisions of this act and penalties for the violation of its provisions," approved on the 10th day of March, 1900.

This order shall take effect upon the complainant's execution of a bond, with good security, to be approved by the clerk, in the penal sum of $1,000, to indemnify the defendants herein against all loss that may result from the issue of the injunction hereby ordered.

And on the 25th day of July, 1900, *came* the following decree was entered :

21 Circuit Court of the United States, Sixth Circuit and District of Kentucky.

JULY 25, 1900.

SOUTHERN RAILWAY COMPANY OF KENTUCKY, Complainant, vs. CHAS. C. MCCHORD, &c., Defendants. } Final Decree.

And now, on this day, came again the complainant, The Southern Railway Company in Kentucky, by Alex. P. Humphrey, counsel, and came the defendants, Chas. C. McChord, J. F. Dempsey, and John C. Wood, by Robert J. Breckinridge, attorney general of Kentucky; D. W. Baird and Louis McQuown, counsel, and on motion of the said defendants, complainant not objecting thereto, the demurrer to the whole bill heretofore filed herein by the said defendants by consent of all parties was brought on for hearing, and having been argued by counsel, and the court, being advised, considered the said bill to be sufficient and doth adjudge and order that the demurrer thereto be, and the same is, accordingly overr*lie*d.

And thereupon the court offered to give and assign time to the said defendants to answer the said bill; but the said defendants, by counsel, declined to answer herein at all and elected to stand by their demurrer.

And thereupon this cause, by consent in open court of all parties, presently came on for hearing in chief, and, all parties submitting this cause for final decree, the court doth order that the said bill of complaint be taken as confessed against the said defendants, and doth further adjudge, order, and decree that the injunction heretofore granted in this cause to restrain the said defendants,

22 Chas. C. McChord, J. F. Dempsey, and John C. Wood, from entertaining any complaint against complainant, or giving any notice to or conducting any hearing against complainant, or fixing any rates, toll, or compensation which complainant may

charge, collect, or receive, or from entering any such rate, toll, or compensation on the record book of their office, or signing the same or mailing any copy thereof to any officer, agent, or employé of the complainant, or from taking any action whatever against or in relation to the complainant under said act of March 10, 1900, entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, or employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribe the manner of enforcing the provisions of this act and penalties for the violation of its provisions," approved on the 10th day of March, 1900, be, and it is hereby, made perpetual, as well *as* to said named defendants as to their successors in office of the railroad commission of Kentucky and their agents and servants.

And the court doth further order that the said defendants shall pay the costs of the complainant herein incurred.

The said defendants pray an appeal from the foregoing decree to the Supreme Court of the United States, which is accordingly granted upon the execution by them of a bond, with surety, to be approved by the court, in the penal sum of $500, conditioned according to law; and thereupon said defendants presented a bond with David W. Baird as surety thereon, which is approved by the court and ordered to be filed; and then came the complainant and waived service of citation upon said appeal and consented that no citation thereon should be issued.

23 The petition for appeal above referred to is as follows:

Circuit Court of the United States in and for the District of Kentucky.

SOUTHERN RAILWAY IN KENTUCKY, Complainant,
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

Petition on Appeal, with Allowance of Appeal.

To the Hon. Walter Evans, district judge and one of the judges of the above-named court, presiding therein:

The above-named defendants and appellants, Charles C. McChord, James F. Dempsey, and John C. Wood, in the above-entitled cause, conceiving themselves aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause under date of July 25, 1900, wherein and whereby, among other things, it was and is ordered and decreed that these defendants and appellants be perpetually enjoined from proceeding under a statute of the State of Kentucky approved March 10, 1900, to fix any rate against the complainant and appellee as directed and authorized by said statute, do hereby appeal to the Supreme Court of the

United States from said order and decree for the reasons set forth in the assignment of errors, which is filed herewith, and they pray that this their petition for their said appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated July 25, 1900.

KOHN & BAIRD,
R. J. BRECKINRIDGE,
ZACK PHELPS, &
LEWIS McQUOWN,
Solicitors for Defendants and Appellants.

Order.

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed and the bond is fixed at $500.00; and thereupon came the counsel for the defendants and appellants in this case and presented their appeal bond in the sum of $500.00, which is approved.

Done in open court this July 25, 1900.

____ ____,
District Judge and One of the Judges of said United States Circuit Court, Presiding Therein.

The assignment of errors above referred to is as follows:

24 Circuit Court of the United States in and for the District of Kentucky.

SOUTHERN RAILWAY IN KENTUCKY, Complainant,
vs.
CHARLES C. McCHORD, JAMES F. DEMPSEY, JOHN C. WOOD, Defendants.

Come the defendants, Charles C. McChord, James F. Dempsey, and John C. Wood, and file the following assignment of errors upon which they and each of them will rely upon their appeal from the decree made by this honorable court on the 25th day of July, 1900, in the above-entitled cause:

1.

That the United States circuit court in and for the district of Kentucky erred in overruling the demurrer interposed by these defendants and appellants to the original bill filed in said cause.

2.

That the said court erred in rendering judgment against these defendants and appellants in said cause upon the pleadings in said cause, and that said judgment is contrary to the law and the facts, as stated in the bill of complaint in said cause.

3.

That the said court erred in rendering a perpetual order of injunction against these defendants and appellants.

4.

That the said court erred in holding that it had jurisdiction of these defendants and appellants upon the subject-matter set forth in the bill of complaint, and before these defendants and appellants had proceeded under said bill to make or establish any rates against the complainant and appellee.

5.

That the said court erred in holding that under the statute of the State of Kentucky complained of these defendants and appellants act as a judicial body or are delegated judicial powers, contrary to the constitution of the State of Kentucky.

25 6.

That the said court erred in holding that the said statute complained of deprives the complainant and appellee of its property without due process of law or denies to the complainant and appellee the equal protection of the law, as guaranteed by the fourteenth amendment of the Constitution of the United States.

7.

That the said court erred in holding that the said statute complained of attempts to regulate interstate commerce and is in violation of article 1, § 8, of the Constitution of the United States.

8.

That the said court erred in holding that the said statute complained of is void and unconstitutional because it does not provide a judicial hearing for the complainant and appellee with reference to the rates to be fixed thereunder or after said rates shall have been fixed.

9.

That the said court erred in holding that the said statute complained of is void because it does not provide that the rates which shall be fixed thereunder shall apply to all railroads in the State of Kentucky, and that because of said failure the said statute denies to the complainant and appellee the equal protection of the law.

Wherefore the said defendants and appellants on appeal pray that the judgment of said court be reversed.

KOHN & BAIRD,
R. J. BRECKINRIDGE,
ZACK PHELPS, &
LEWIS McQUOWN,
Counsel for Defendants.

The appeal bond above referred to is as follows:

26 Circuit Court of the United States, District of Kentucky.

SOUTHERN RAILWAY COMPANY IN KENTUCKY }
vs.
C. C. McCHORD, J. F. DEMPSEY, and JOHN C. WOOD. }

Know all men by these presents that we, C. C. McChord, J. F. Dempsey, and John C. Wood, and David W. Baird, are held and firmly bound unto Southern Railway Company in Kentucky in the sum of five hundred dollars, to be paid to the said Southern Railway Company in Kentucky, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 25th day of July, A. D. 1900.

Whereas the above named C. C. McChord, J. F. Dempsey, and John C. Wood hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named C. C. McChord, J. F. Dempsey, and John C. Wood shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. C. McCHORD, [L. S.]
J. F. DEMPSEY, [L. S.]
JOHN C. WOOD,
By LOUIS McQUOWN, *Att'y.* [L. S.]
DAVID W. BAIRD. [L. S.]

Sealed and delivered in presence of—
THOS. SPEED, *Clerk.*

27 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 26 pages contain a true and correct transcript of the record and proceedings in the case of Southern Railway Company in Kentucky *vs.* C. C. McChord *et al.*, No. 6817, as the same appears from the files and records in my said office.

Witness my hand and seal of said court this 2nd day of August, A. D. 1900.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN,
Deputy Clerk.

Endorsed on cover: File No., 17,884. Kentucky C. C. U. S. Term No., 399. Charles C. McChord, James F. Dempsey, and John C. Wood, appellants, *vs.* The Southern Railway Company in Kentucky. Filed August 21st, 1900.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 145.

CHARLES C. McCHORD, JAMES F. DEMPSEY, AND JOHN C. WOOD, APPELLANTS,

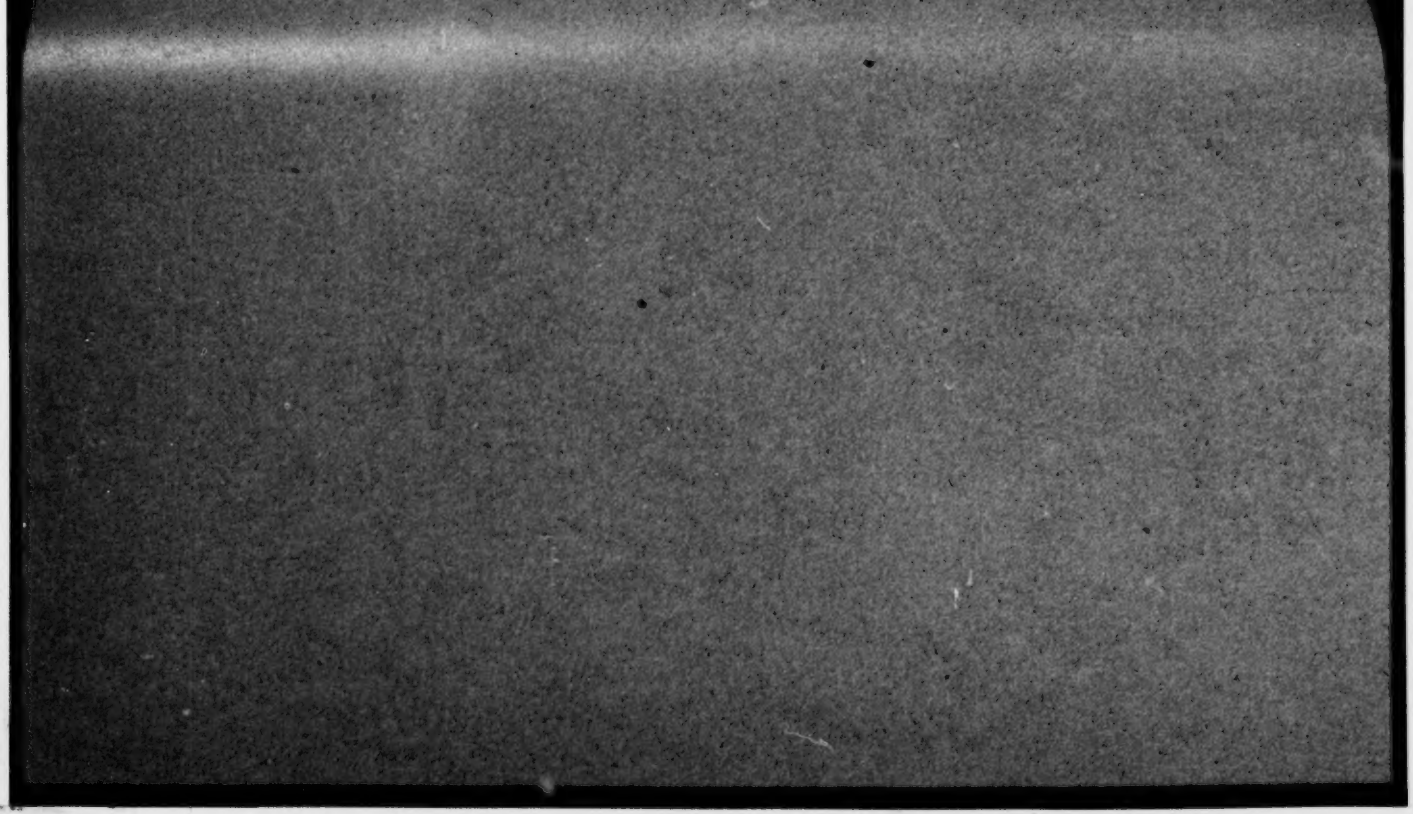
vs.

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED AUGUST 21, 1900.

(17,885.)



(17,885.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 400.

CHARLES C. McCHORD, JAMES F. DEMPSEY, AND JOHN C. WOOD, APPELLANTS,

vs.

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 22, 1900.

1 UNITED STATES OF AMERICA, }
District of Kentucky, } ss:

At a stated term of the circuit court of the United States of America within and for the district of Kentucky, in the sixth judicial circuit of the United States of America, begun and held at Federal court hall, in the city of Covington, Kentucky, in said district, on the second Monday of May, being also the 14th day of that month, in the year of our Lord one thousand nine hundred, and of our Independence the 124th year—present, Hon. Walter Evans, sitting as circuit judge—among other proceedings had were the following, to wit:

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY Company, Complainants,
vs.
C. C. McCHORD, J. F. DEMPSEY, and JOHN C. WOOD, Defendants.

Be it remembered that heretofore, to wit, on the 11th day of July, A. D. 1900, came the plaintiffs, by their attorneys, and filed in the clerk's office of said court their certain petition against the defendants herein. Said petition was and is in words and figures following, to wit:

2 UNITED STATES OF AMERICA, }
District of Kentucky. }

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC Railway Company
vs.
C. C. McCHORD, J. F. DEMPSEY, and JOHN C. Wood. } Bill in Equity.

To the judges of the circuit court of the United States for the district of Kentucky:

The Cincinnati, New Orleans & Texas Pacific Railway Company, a corporation organized under and pursuant to the laws of the State of Ohio and having its principal place of business in the city of Cincinnati, State of Ohio, brings this its bill of complaint against C. C. McChord, a resident of Springfield, Kentucky; J. F. Dempsey, a resident of Madisonville, Kentucky, and John C. Wood, a resident of Mt. Sterling, Kentucky; and thereupon your orator complains and says that it is a corporation organized under the laws of the State of Ohio and of no other State, and that the defendants are all of them citizens and residents of the State of Kentucky, and that the amount involved in this litigation exceeds the sum of two thousand ($2,000) dollars, exclusive of interest and costs.

1. Your orator says that by an act of the General Assembly of the State of Kentucky entitled An act to authorize the trustees of the Cin-

cinnati Southern railway to acquire the right of way and ex-
3 tend a line of railway through certain counties of this Common-
wealth," approved February 13, 1872, the trustee- of the Cincinnati Southern railway acquired the right of way through the State of Kentucky and constructed thereon a line of railway extending from the city of Cincinnati, Ohio, through the State of Kentucky to the city of Chattanooga, in the State of Tennessee; that by the terms of said act the said trustee- of the Cincinnati Southern railway were authorized and empowered to lease said line of railway to another railroad corporation for the purpose of operating the same; that by the provisions of said act the lessee to whom said road was leased was entitled to charge for transportation on said railway not exceeding 35 cents per 100 pounds on heavy articles, — cents per cubic foot on articles of measurement for every hundred miles, and 4 cents a mile for every passenger; that on the 11th day of October, A. D. 1881, the trustees of the Cincinnati Southern railway leased said line of railway to your orator, who since said date has been and is now in possession of said line of railway, and has been operating said railway as a common carrier of passengers and freight from the city of Cincinnati, Ohio, to the city of Chattanooga, Tennessee; that by and under the provisions of the said act your orator is permitted to charge for transportation over said line not exceeding 35 cents per 100 pounds on heavy articles, — cents per cubic foot on articles of measurement for every hundred miles, and 4 cents a mile for every passenger; that said railroad so
4 constructed and leased, as aforesaid, commences in the State of Ohio and passes through the State of Kentucky and through the State of Tennessee to Chattanooga, in the State of Tennessee; that but a part of said railroad, to wit, $197\frac{88}{100}$, miles, operated by your orator, as aforesaid, lies within the State of Kentucky, and that all of said railroad so constructed and operated by your orator is now held and operated by virtue of and under the faith of said grant from the Commonwealth of Kentucky to the said trustees of the Cincinnati Southern railway.

Your orator says that by reason of the premises there was and is a valid and subsisting contract between the Commonwealth of Kentucky and your orator, whereby your orator is permitted to charge within the State of Kentucky not exceeding the maximum rates hereinbefore set out upon the railroad operated by it within the State of Kentucky, and that the lease of your orator to operate said railroad was acquired by your orator upon the faith of said contract.

2. Defendants herein are holding and exercising the position of railroad commissioners in the State of Kentucky, having been duly elected and qualified therefor, and as such constitute the railroad commission of said State, and as such claim and unless restrained by the order of this court will exercise the right to fix rates for the transportation of passengers and property over the lines of your orator's railroad in the State of Kentucky by virtue of an alleged act of the General Assembly of the Commonwealth of Ken-
5 tucky, which it is claimed was approved on the — day of March, 1900, and took effect on the 12th day of June, 1900,

entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, and employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribing the manner of enforcing the provisions of this act and penalties for the violation of its provisions." The said act consists of five sections in the following words, to wit:

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SEC. 1. When complaint shall be made to the railroad commission accusing any railroad company or corporation of charging collecting or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, or when said commission shall receive information or have reason to believe that such rate or rates are being charged, collected or received, it shall be the duty of said commission to hear and determine the matter as speedily as possible. They shall give the company or corporation complained of not less than ten days' notice by letter mailed to an officer or employé of said company or corporation, stating the time and place of the hearing of same; also the nature of the
6 complaint or matter to be investigated, and shall hear such statements, arguments or evidence, offered by the parties as the commission may deem relevant; and should the commission determine that the company or corporation is, or has been, guilty of extortion, said commission shall make and fix a just and reasonable rate, toll or compensation which said railroad company or corporation may charge, collect or receive for like services thereafter rendered. The rate, toll or compensation so fixed by the commission shall be entered and be an order on the record book of their office and signed by the commission and a copy thereof mailed to an officer, agent or employé of the railroad company or corporation affected thereby and shall be in full force and effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad company or corporation or any officer, agent or employé thereof, charge, collect or receive a greater or higher rate, toll or compensation, for like services thereafter rendered than that made and fixed by said commission, as herein provided, said company or corporation, and said officer, agent or employé, shall each be deemed guilty of extortion, and upon conviction shall be fined for the first offense in any sum not less than five hundred dollars nor more than one thousand dollars, and upon a second conviction in any sum not less than one thousand dollars nor more than two thousand dollars, and for third and succeeding convictions in any sum not less
7 than two thousand dollars nor more than five thousand dollars.

SEC. 2. The circuit court of any county into or through which the line or lines of road carrying such passenger or freight owned or operated by said railroad, and the Franklin circuit court, shall

have jurisdiction of the offense against the railroad company or corporation offending, and the circuit court of the county where such offense may be committed by said officer, agent or employé, shall have jurisdiction in all prosecutions against said officer, agent or employé.

SEC. 3. Prosecutions under this act shall be by indictment.

SEC. 4. All prosecutions under this act shall be commenced within two years after the offense shall have been committed.

SEC. 5. In making said investigation said commission may, when deemed necessary, take the depositions of witnesses before an examiner or notary public, whose fee shall be paid by the State, and upon the certificate of the chairman of the commission, approved by the governor, the auditor shall draw his warrant upon the treasurer for its payment."

By said act said railroad commission is authorized and required, when complaint is made or when it receives information or has reason to believe that any railroad company or corporation, in its judg-
8 ment, is charging, collecting, or receiving extortionate freight or passenger rates over its line of railroad in this Commonwealth, to hear and determine the matter as speedily as possible, and before doing so to mail not less than ten days beforehand a notice to any officer, agent, or employé of said company or corporation—for example, to a brakeman or section hand—stating the time and place of the hearing and the nature of the matter to be investigated. Upon such hearing the commission may hear whatever evidence, statements, and arguments it may choose to hear, whether the same be competent or incompetent as evidence, and may exclude and refuse to hear any and all competent evidence which it may choose to exclude and refuse to hear. Said railroad commission is further authorized and required by said act, if upon such investigation made upon such notice it shall determine that said company or corporation is or has been guilty of extortion in the particular charged, to make and fix, without any notice and without any investigation, what it shall deem to be a just and reasonable rate, toll, or compensation which said company or corporation may thereafter charge, and said rate, toll, or compensation shall be in full force and effect at the expiration of ten days after said commission shall have mailed a copy of the order fixing the same to any officer, agent, or employé of said company or corporation affected thereby—for example, as above stated, such notice may be mailed to a brakeman or section hand—
and at all times thereafter said commission may, at any time
9 and without notice and without investigation, modify or change the rates thus fixed by it; and if said company or corporation or any of its officers, agents, or employés shall thereafter charge, collect, or receive a greater rate than that made and fixed by said commission, as above stated, said company or corporation and said officers, agents, and employés are each by said act made guilty of extortion and, upon conviction, are each to be fined for the first offense not less than five hundred dollars nor more than one thousand dollars, and upon a second conviction in any sum not less than one thousand dollars nor more than two thousand

dollars, and for third and succeeding convictions in any sum not less than two thousand dollars nor more than five thousand dollars.

Thus, under said act, said railroad commission is authorized to fix the rates of your orator and all other railroad corporations without any notice and without any investigation. The rates so fixed are to go in full force and effect simply by lapse of ten days from the date of the mailing of the copy of the order fixing the same to any officer, agent, or employé of the railroad company, and unless the railroad corporation affected thereby straightway complies with said rates, although such rates may be a palpable invasion of such corporation's constitutional rights, such corporation will be subject to the exclusive fines fixed in said act with respect to each shipment passing over its road to which said commission desires said rates so fixed to apply, and every officer, agent,
10 or employé of said corporation either charging, collecting, or receiving the rates so fixed and charged by said corporation for each of such shipments in question, although the said corporation may have full right and power under the Constitution of the United States to charge said rates, will likewise be subjected to such excessive fines.

3. All your orator's rates charged, collected, or received within the State of Kentucky are just and reasonable and have not been sufficient for many years to give it a fair return upon the reasonable value of its investment, notwithstanding it has at all times operated its property with the strictest economy and in the most skillful manner. All of said rates are very much less than the rates which your orator has the right to charge by its contract with the Commonwealth of Kentucky hereinbefore set out. In addition to complying with this contract with the State of Kentucky in the matter of rates fixed and charged, and in addition to fixing and charging said rates subject to and in conformity with the requirements of law applicable to all common carriers that their rates shall be just and reasonable, your orator is subject to and complies *will* all the requirements of the laws of the State of Kentucky prohibiting unjust discrimination between individuals and localities in the matter of rates, which laws do not apply to all common carriers, but are reasonably restricted, so as to apply merely to corporations which operate railroads, and, in addition to complying with its agreement with the State of Ken-
11 tucky and with all the provisions of the law, your orator is forced to and does recognize the requirements of competition which constantly tend to reduce rates and which affect not merely rates to or from points known as competitive points, but in a greater or less degree all rates between all points, so as to prevent any rates becoming or remaining unreasonably high; yet notwithstanding the premises it was and is the purpose of the said act last above referred to to reduce the rates of your orator and other railroad companies in the State of Kentucky, and your orator believes and avers that the said act will have said effect and no other. Your orator submits, therefore, that the necessary effect of said act will be to impair the obligation of said contract between your orator and the

Commonwealth of Kentucky, to the great and irreparable injury of your orator, and the said act is therefore, as to your orator, null and void because in contravention of paragraph 1 of section 10 of article 1 of the Constitution of the United States, b[illegible] your orator believes and alleges that unless restrained by the order of this court the said defendants will proceed under said act, though the same is null and void, to reduce the said rates, and thereby violate the said contract rights, to your orator's irreparable injury, and your orator and its agents, servants, and employés will on that account, as will hereinafter be more fully set out, be subjected to a multiplicity of prosecutions and actions.

12 4. It is the duty of said railroad commission, composed, as aforesaid, of the defendants herein, to see that the law relating to all railroads, except street, are faithfully executed, and to exercise a general supervision over the railroads of the State. To this end they are authorized and required to inquire into the management of affairs of railroad companies; to inspect and examine their tracks, bridges, tunnells, and other structures; to supervise facilities at stations, and in many other ways to exercise administrative functions with respect to the railroads of said State. The constitution of said State divides the powers of its government into three distinct departments, each to be confined to a separate body of magistracy—those which are legislative to one, those which are executive to another, and those which are judicial to another—and declares that no person or collection of persons being of one of those departments shall exercise any power properly belonging to either of the others, except in the instances expressly directed and permitted in said constitution. By said constitution the judicial power of said State is vested in the senate, when sitting as a court of impeachment, and one supreme court, to be styled the court of appeals, and the courts established by said constitution, to wit, circuit courts, quarterly courts, county courts, justices' courts, police courts, and fiscal courts. The said railroad commission is not established as a court by said constitution and is not expressly directed or permitted by said constitution to exercise any judicial powers; on the

13 contrary, its powers are essentially and purely of an administrative character, and it essentially belongs to the exclusive department of the State government. The laws of said State not only fail to confer upon it judicial functions or powers, but prohibit the conferring of any such powers upon it, and by reason of the administrative functions with respect to the conduct and regulation of railroads which said commission is required and authorized to perform it is rendered essentially unfit to exercise judicial functions.

5. While all other common carriers, whether operating railroads or not, are subject only to the requirements that their rates shall be just and reasonable, and in case of controversy are entitled to have the judgment of the courts upon that question, the said act hereinbefore referred to singles out railroad corporations and denies them the equal protection of the laws applying to all other common carriers, and deprives said railroad corporations of any opportunity to have judicial determination

of the reasonableness of their rates when the same are called in question, and substitutes therefor the determination of said railroad commission, which is not and cannot be a court and which does not afford and cannot afford a judicial hearing or determination of questions brought before it; and whereas all other common carriers in the event of a judicial determination by a court of competent jurisdiction that their rates are unreasonable are bound to refund only the excess of such rates over what are just and reasonable rates, and no other penalty or consequence at-
14 taches to such judicial determination, yet railroad corporations are to be subjected, in the absence of any j-dicial determination as to whether their rates are reasonable or otherwise, and simply upon the determination of said non-judicial tribunal, the railroad commission, that such rates are unreasonable, to the penalty of having the power to make their rates taken out of their hands and vested exclusively in said railroad commission, which commission is then without any hearing, judicial or otherwise, to fix such rates as it may choose, and is thereafter without any notice and without any hearing, judicial or otherwise, to have the right at its pleasure to modify the rates so fixed by it, and if said railroad corporations fail to charge the rates thus fixed for them by this unjust and unconstitutional procedure they will be subjected for every shipment passing over their lines to which said railroad commission may desire said rates so fixed by it to apply to the prosecutions, fines, and penalties imposed in said act.

6. Your orator submits that under the Constitution of the United States, and independently of the aforesaid contract with the State of Kentucky, it is entitled to charge reasonable rates for the use of its property, and that it cannot be compelled to charge rates fixed by the railroad commission of Kentucky in the absence of a judicial investigation and determination that the rates so fixed are just and reasonable; that the said act makes no provision for any investigation or determination even by the railroad com-
15 mission that the rates fixed by it are just and reasonable, and the said commission may fix such rates without any notice to the railroad corporations to which said act applies as to what said commission proposes to do and without any investigation of the question involved, and may thereafter charge or modify said rates without any notice or investigation; but that even if said commission should choose to give notice and investigate such questions, such investigation and resulting determination would not satisfy your orator's constitutional rights to a judicial determination, because said commission is not a court, nor is it clothed with judicial functions, but, on the contrary, it is an administrative tribunal, which, under the law, cannot exercise judicial functions, and which, by reason of the functions it does exercise, is in its nature incapable of affording the judicial investigation to which your orator is entitled, and by said act your orator is denied the privilege and right to have it judicially determined by a court of competent jurisdiction whether the rates fixed and charged by it are just and reasonable, and whether the rates fixed by said commission amount to

a confiscation and spoilation of its property. If, therefore, defendants be permitted to proceed under said act, your orator will be compelled to charge the rates fixed by them without any opportunity for a judicial investigation and determination as to their reasonableness, and it will thus be deprived of the lawful use of its property and in substance and effect of its property itself without due process of law, and will also be denied the equal protection
16 of the laws, in violation of section 1 of article 14 of the amendments to the Constitution of the United States.

7. Your orator further says that the said act of March, 1900, relates to all freight and passenger rates charged, collected, or received by railroad companies in the Commonwealth of Kentucky, and is not restricted to rates actually charged, collected, and received, within the Commonwealth of Kentucky, for transportation commencing and ending within the said State, and therefore by its terms is an express and direct interference with and regulation of commerce among the States, inasmuch as by far the greater part of the freight and passenger rates charged, collected, or received by your orator within the Commonwealth of Kentucky are interstate rates charged or collected and received within said State for the transportation of passengers and freight between points in other States and points in this State, and therefore the said act is in conflict with paragraph 3 of section 8 of article 1 of the Constitution of the United States, which gives the Congress of the United States exclusive power to regulate commerce among the States, and which power has been exercised by Congress by an act of February 4, 1887, entitled "An act to regulate commerce among the States," and by the acts amendatory thereof, and that said act of March, 1900, is therefore null and void.

8. Defendants are giving it out in speeches and interviews that they intend to proceed at once under the said act, and, unless restrained by the order of this court, defendants will proceed at
17 once to hear and determine complaints under said act, although the same is in contravention of the Constitution of the United States in all the particulars hereinabove set out, and is therefore null and void, and will proceed thereupon to reduce your orator's rates to such as they think your orator should charge, and will thereafter at pleasure modify and still further reduce the rates so fixed, and if your orator does not observe the rates so fixed, no matter how unjustly and unreasonably low, your orator will be subjected to innumerable prosecutions through the State of Kentucky for failing to comply with such rates fixed in this unconstitutional manner, and it will be subjected *in* innumerable suits by consignors and consignees, who will claim the right to ship at said rates so unconstitutionally fixed and to sue for any excess they may be charged over said rates, though rightfully charged, and at the same time all your orator's officers and agents and servants, though perfectly innocent of any offense and though merely assisting your orator to maintain its constitutional rights, will be indicted, prosecuted, and heavily fined, to the great demoralization of the public service which your orator is

bound to render, and so it is, unless said defendants are restrained by the order of this court from proceeding under said act, your orator's contract rights will be impaired, it will be deprived of its property without due process of law, denied the equal protection of the law, and subjected to great and irreparable wrong and injury and to a vast multiplicity of prosecutions and actions in the courts of said
18 State *courts of said State.*

Forasmuch as your orator can have no adequate relief except in this court, and to the end that the defendants may, if they can, show why your orator shall not have the relief herein prayed, and that they answer this bill according to the course and practice of the court, but not under oath, the answer of each of them under oath being hereby expressly waived, your orator prays the said act of March, 1900, be decreed and declared to be in contravention of the Constitution of the United States, and therefore null and void, and that until the further order of the court said defendants be enjoined from taking any action whatever against or in relation to complainant under said act; that said injunction may be made perpetual upon final hearing, and as irreparable injury to your orator may ensue if defendants should take any action against or in relation to your orator under said act before the motion for a preliminary injunction can be heard, your orator prays that an order be granted restraining defendants from doing the acts herein sought to be enjoined, and your orator prays for such other and further relief as in equity it may be entitled to, and further prays that your honors also grant unto your orator a writ of subpœna of the United States of America, directed to the said C. C. McChord, J. F. Dempsey, and John C. Wood, commanding them on a day certain to appear and answer this bill and to abide and perform such
19 order and decree as to your honors shall seem meet and equitable; and your orator will ever pray, &c.

HARMEN, COLSTON, GOLDSMITH & HOADLEY,
C. B. SIMRALL,
Solicitors for Complainant.

UNITED STATES OF AMERICA, *District of Kentucky,* } ss:

W. J. Murphey, being duly sworn, states that he is general manager of The Cincinnati, New Orleans and Texas Pacific Railway Company, the complainant above named; that he has read the foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

W. J. MURPHEY.

Sworn to before me and subscribed in my presence this 11th day of July, A. D. 1900.

S. E. HIBBARD,
Notary Public, Hamilton Co., O.

And on the same day, to wit, on July 11th, A. D. 1900, there issued out of the clerk's office of said court the following subpœna in chancery, viz:

The President of the United States of America to C. C. McChord, J. F. Dempsey, John C. Wood, Greeting:

20 You are hereby commanded to appear before our circuit court of the United States of America for the district of Kentucky, at the Federal court hall, in the city of Covington, on the first Friday in August next, to answer a bill in equity exhibited against you in our said court by The Cincinnati, New Orleans & Texas Pacific Railway Company, which you shall in nowise omit under the penalty of the law.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of said circuit court hereto affixed, at the clerk's office of said court, in Covington, this 11th day of July, A. D. 1900, and in the 125th year of our Independence.

Attest: JOS. C FINNELL, *C. C., K. D.*

MEMORANDUM.—The defendants to enter their appearance in the suit in the clerk's office on or before the 6th day of August next, the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*.

JOS. C. FINNELL, *Clerk.*

And on a day following, to wit, on July 19th, A. D. 1900, came the complainants herein and filed the following motion, viz:

21 United States Circuit Court, District of Kentucky.

THE C., N. O. & T. P. R'Y CO.
vs.
C. C. McCHORD, J. F. DEMPSEY, and JOHN C. WOOD.

Now comes the complainant herein and moves the court for a temporary restraining order herein.

C. B. SIMRALL,
HARMON, COLSTON,
GOLDSMITH & HOADLEY,
Solicitors for Complainant.

And on a day following, to wit, on July 21st, A. D. 1900, the following waiver of notice upon motion for restraining order was filed herein, viz:

United States Circuit Court, District of Kentucky.

THE C., N. O. & T. P. R'Y CO.
vs.
C. C. McCHORD, J. F. DEMPSEY, and JOHN C. WOOD.

Now come the defendants herein and waive notice of the time and place of the hearing of the motion for the temporary restraining

order herein, and agree that the said motion may be submitted to the court without argument.

ROB'T J. BRECKINRIDGE,
Attorney for Defendant.

22 And on the same day, to wit, on July 21, A. D. 1900, the subpœna in chancery which issued herein on the 11th day of July, A. D. 1900, was returned and filed with the proceedings of the marshal thereon endorsed in words and figures following, to wit:

"Executed the within on C. C. McChord by delivering a true copy of same to him this July 13th, 1900.

A. D. JAMES,
U. S. Marshal,
By M. C. JAMES,
D. Marshal.

Fee, $2.00.

Executed on within J. F. Dempsey, at Madisonville, Ky., by delivering him a true copy of same this July 14th, 1900.

A. D. JAMES,
U. S. Marshal,
By S. YONTS,
D. Marshal.

Marshal's cost, $5.14."

And on the same day, to wit, on July 21st, A. D. 1900, came the defendants, by their attorneys, and filed in the clerk's office of said court the following demurrer, viz:

United States Circuit Court, District of Kentucky.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC Railway Company *vs.* C. C. McCHORD, &c. } Demurrer.

23 The defendants, C. C. McChord, J. F. Dempsey, and John C. Wood, not confessing all or any of the matters in the bill of complaint contained to be true as therein set forth, do demur to said bill, for that the same does not state such a case nor contain any matter of equity entitling the complainant to any relief against these defendants; that the court is without jurisdiction, and that the plaintiff has an adequate remedy at law.

Wherefore they pray the judgment of the court whether they shall be compelled to further answer said bill, and further pray to be dismissed with their costs.

KOHN, BAIRD & SPINDLE,
McQUOWN & BRODBURN,
ZACK PHELPS, *Counsel.*

I, Lewis McQuown, of counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is, in my opinion, well founded in law.

LEWIS McQUOWN.

UNITED STATES OF AMERICA, }
District of Kentucky. }

I, C. C. McChord, defendant in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

C. C. McCHORD.

Subscribed and sworn to before me by C. C. McChord this 20th day of July, 1900.

My commission expires January 12th, 1904.

DAVID W. BAIRD,
N. P., J. C., Ky.

24 And afterwards, to wit, on July 25th, A. D. 1900, an entry was made on the journal of said court clothed in words and figures following, to wit:

Journal "H," page 657.

Came the parties, by counsel, and, on the hearing of the complainant's bill and on the demurrer to the bill of complaint herein, offered to read to the court as a part of the bill of complaint the following acts of the General Assembly of the Commonwealth of Kentucky pertaining to the complainant's charter, and thereupon it was ordered that the said acts be, and they are, considered as read on the hearing of said demurrer and bill as part thereof: Act of February 15th, 1872; act of March 25th, 1872; act of February 4th, 1873; act of May 15th, 1886; and it is further ordered that complainant file in this cause as a part of its bill of complaint typewritten copies of said acts, which is accordingly done.

Said acts referred to in the foregoing entry were and are in words and figures following, to wit:

An act to authorize the trustees of the Cincinnati Southern railway to acquire the right of way and to extend a line of railway through certain counties in this Commonwealth.

25 Whereas, it is represented to this General Assembly that Miles Greenwood, Richard M. Bishop, William Hooper, Philip Heidelbach, and Edward A. Ferguson, of the city of Cincinnati, in the State of Ohio, were appointed, under and by virtue of an act of the General Assembly of the said State of Ohio, passed on the fourth day of May, in the year eighteen hundred and sixty-nine, a board of trustees, with authority to borrow a fund not exceeding ten millions of dollars, and to issue bonds therefor in the name of said city of Cincinnati, under the corporate seal thereof, of which said fund the said Miles Greenwood, Richard M. Bishop, William Hooper, Philip Riedilbach and Edward A. Furguson, and their

successors, are to be trustees, with power to expend the same in procuring the right to construct and in constructing a single or double track railway, with all the usual appendages, including a line of telegraph, between the city of Cincinnati and the city of Chattanooga, in the State of Tennessee, to be called and known as the Cincinnati Southern railway; and with power and capacity for the purposes aforesaid to make contracts, appoint, employ and pay officers and agents, and to acquire, hold and possess all the necessary real and personal property and franchises, either in the said State of Ohio or in any other State in which the said line of railway may extend, and with other powers in said act expressed; provided, the trustees of said road shall cause to be surveyed one or more routes for said road by a competent engineer and assistants from the city of Cincinnati, by the way of Nicholasville and Danville, to the State line, in the direction of Sparta, Tennessee; thence on the most direct practical route to
26 Chattanooga, having due regard to grade and cost of construction. The engineers shall lay before the board of trustees a map of the route, exhibiting the excavations, fills, bridges, grades, tunnels, &c., with approximate estimates of the cost of constructing the road from Cincinnati to the State line, thence to Chattanooga, which estimates shall show separately the cost of constructing this line and others that may be made and reported by engineers. Each line surveyed shall be reported to the citizens of Cincinnati, that they may express their preference for either route by their votes; and that the trustees shall locate the road-bed as indicated by the votes of the citizens and tax-payers of said city; and whereas, the said line of railroad cannot be constructed, nor the powers of said board of trustees be exercised within the Commonwealth of Kentucky; without the consent of the General Assembly thereof. The General Assembly reserves the right to change alter or, modify this act, and to regulate, by general laws, the rates of charges for the transportation of freights and passengers on said railway; therefore,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. That the said board of trustees namely: Miles Greenwood, Richard M. Bishop, Wm. Hooper, Philip Heidelbach and Edward A. Ferguson, and their successors, by the name of the trustees of the Cincinnati Southern railway, be, and they are hereby authorized to
*en*tend, construct and maintain, within the Commonwealth
27 of Kentucky, the said line of railway, with a single or double track, with all the usual appendages, including a line of telegraph, and to exercise the powers vested in them under and by virtue of said act of the General Assembly of the State of Ohio, subject to the provisions and restrictions in this act provided.

§ 2. For the purpose of examining and surveying routes for the said line of railroad, the said trustees may, subject to liability for the actual damage done, enter upon any land in the counties of Josh, Bell, Knox, Whitley, Laurel, Clay, Owsley, Jackson, Estill, Madison, Clark, Bourbon, Harrison, Pendleton, Campbell, Kenton, Boone,

Gallatin, Grant, Owen, Scott, Franklin, Anderson, Woodford, Fayette, Jessamine, Mercer, Garrard, Boyle, Lincoln, Rockcastle, Casey, Pulaski, Russell, Wayne, Clinton, Cumberland, Monroe, Metcalfe, and Adair, and select from the routes so examined and surveyed a route for the same, commencing at a point to be selected by the said trustees where the said line of railway will cross the southern boundary of this Commonwealth, and running — either of said counties to the northern boundary line thereof, and across the Ohio river, so as to connect with the same line of railway in the State of Ohio. A copy of the survey and location of such route, and any alterations therein, shall be filed in the county clerk's office of the counties through which the said railway runs, within one year after such location or alteration.

§ 3. For the purpose of constructing and maintaining said line of railway and its appendages, the said trustees may acquire, by purchase or gift, so much land as may be necessary to construct,
28 complete, and operate their railway and its appendages; and it shall be lawful for them to apply to any circuit or county court, of any county through which it may be propesed said railway may pass, and for said court to appoint a competent engineer, and two disinterested commissioners, to examine the proposed route of said railway, and to take from the proprieotrs of land over which it is to pass a grant of the right of way, of such width as may be desired, provided, the same shall not exceed one hundred feet, and which may include the right to take stone, timber, earth or gravel for the construction of their road; and they, jointly and severally, shall have the power and authority to take and certify under their hands and seals, the acknowledgment of such grants in fee or right of way, and the separate acknowledgment of married women, that the clerks of the several courts have; and on the presentation of the grant and acknowledgement to the clerk of the county court where the land lies, it shall be the duty of the clerk to record the same as other deeds: and they shall be effectual against all persons according to their tenor: Provided, that where the parties are infants or absent, or refuse to make the grant, they shall hear any proof that may be adduced, and upon their own view proceed to value land required for the right of way, or lands required -or turn-outs for depot stations, or other appendages of said road, and also of earth stone, gravel or timber for the construction of said road, and report the value they have fixed, together with the evidence adduced, to the court appointing them, with a map or profile of the required groung; and said report shall be filed with the clerk of such
29 court, and a summons issued to the proprietors to show cause against the confirmation of the report; but if the proprietors shall be out of the Commonwealth, the summons may be executed upon a known agent in the county, then the court may order the appearance of the party at a named day, and appoint the clerk to give the proprietor notice by letter; and in case of there being infant, idiot, or lunatic proprietors, the court shall appoint guardians *ad litem* for them, and cause the guardian to appear and act for them; and in case an absent defendant does not appear, the

court shall appoint an attorney of the court to act for them. It shall be lawful for the trustees or any proprietor, or both, to traverse the report, and for the court to have the traverse tried in open court by competent jury; on which trial the report and evidence returned as aforesaid shall be heard, together with such proof as either party may produce. A new trial to the finding of the jury may be granted as in other cases. The report shall stand for hearing, as to any proprietor, when the process has been executed ten days, or after appearance of a proprietor on a day fixed for his appearance; and the court shall have jurisdiction to confirm the report, if no traverse is filed; and in case a traverse is filed, to have the same tried by a jury, and to give judgment upon the report or finding of the jury, and order the payment of the money, and the execution of the grant in accordance with the report; and to have the grant executed by a commissioner appointed by the court, and to order them to be recorded in the county clerk's office of the county: and either party may appeal from the judgment of the court.

§ 4. That the commissioner or jury, in estimating the value
30 of the lands proposed to be taken, shall not be confined to the actual value, but may take into consideration any consequential damage that may result to the adjoining proprietors of the land, and also the advantages and disadvantages the proposed road will be to such lands.

§ 5. That upon the affidavit of the engineer of said trustees, made and filed before the county judge of any county through which the proposed road may pass, that at any point more than one hundred feet is necessary properly to construct and operate said road, said trustees may acquire the right to so much land as may be necessary for that purpose, and in the manner provided in the preceding section.

§ 6. The said trustees may also, for the purpose of constructing and maintaining said line of railway, occupy or use any turnpike or plank road, street or other public way or ground or any part thereof, upon such terms and conditions as may be agreed upon between said trustees and the municipal or other corporations, persons, or public authorities owning or having charge thereof; and in case it shall be necessary to provide a new road, street, or other ground, in place of that so used or occupied, they may acquire the necessary land and cause the necessary improvement to be made thereon. If no agreement can be made for the right to use or occupy any road or street, or ground that may be necessary, the said trustees may take and appropriate said rights in the manner provided in the nect section; provided, that, before the damages are assessed, the court may fix such terms and conditions as may be deemed best for the public interest.

§ 7. The appropriations authorized in the preceding section
31 shall be made in the manner, and subject to the same right of traverse, writ of error, and appeal, provided by law for taking private property for the use of turnpike and plank road companies, except that the petition shall be filed in the circuit court of

the county in which said turnpike, plank roads, streets, or public ways or grounds may lie; and if a continuous portion of the same, lying in more than one county, is sought to be used or occupied, the proceedings may be instituted in the circuit court of any county in which any part of such continuous portion may lie; and the damages shall be assessed for the whole of such portion, whether lying in the county wherein the proceedings are instituted or in other counties; the writ shall be directed to the sheriff of the county in which the petition is filed.

§ 8. If, during the construction or after the completion of said line of railway, it shall be found necessary by said trustees to change the location or grade, or substitute other works or conveniences for those originally designed or constructed, to provide additional side tracks or other appendages for the proper management and operation of said railway, the said trustees may make such changes and provide such additional appendages, not departing from the general route originally selected by them; and, for the purpose aforesaid, may acquire or enter upon, take and appropriate, such lands or rights, as may be necessary, in the mode hereinbefore prescribed.

§ 9. Wherever, along the route selected by said trustees,
32 there shall be a railroad already constructed, or right of way or depot or other grounds acquired therefor, which railroad, rights of way or grounds, can be adopted as a part of the said line, it shall be lawful for persons, company or corporations owning the same, to sell to the said trustees the said railway, rights of way or grounds, or any part thereof, upon such terms and conditions as may be agreed upon between the said trustees and such persons, or the president and directors of such company or corporation: Provided, that no such agreement shall be binding upon the stockholders of any such company or corporation unless a majority in interest of said stockholders, as shown by the books of such company or corporation, shall ratify the same in person or by proxy, at a meeting to be held at the place of holding the election of directors, to be called after notice given of the object of the meeting, in the manner provided for notice of such elections.

§ 10. No permanent bridge or other work shall be so constructed as to materially interrupt or impair the navigation of such streams as are naturally navigable or as have been declared to be so by law.

§ 11. And whereas, under and by virtue of the above-mentioned act of the General Assembly of Ohio, the said board of trustees have power to borrow a fund for the construction of the said line of railway, not to exceed ten millions of dollars, and to issue bonds therefor in the name of the city of Cincinnati under the corporate seal thereof, bearing interest at a rate not to exceed seven
33 and three-tenths per centum per annum, payable at such times and places, and in such sums as shall be deemed best by said board; and attested by the city auditor of said city, who is to keep a register of same, and are to be secured by a mortgage on the said line of railway and its net income and by pledge of the faith of said city and a tax which it is made the duty by said act of

the council of said city annually to levy, sufficient, with said net income, to pay the interest, and provide a sinking fund for the final redemption of said bonds; Be it further enacted, That the respective holders of all such bonds are hereby declared to be entitled to hold, by way of mortgage, without any conveyance, the said line of railway and its appendages, and the net income thereof, and all the estate right and title, and interest of the said city of Cincinnati, and of the said board of trustees therein, until the respective sums mentioned in said bonds, and the interest thereon, shall be fully paid, without any preference one above another, by reason of priority of date of any of such bonds, or of the time when such holder became the owner of the same, or otherwise howsoever. The mortgage lien hereby given is to vest, as soon as rights of way or lands, whereon are to be placed the works and conveniences used in constructing, maintaining, or operating said railway, are acquired or taken, by virtue of the powers of the said trustees: Provided, that nothing herein contained shall effect the lien of any vendor upon lands so sold to said trustees, nor to be held to include the rolling-stock used in operating said road; and provided further, that any mortgage that may be made by any lessee or lessees of
34 said line of railway, or persons or company operating it, on the rolling stock used in operating said road, shall not have precedence over, but shall be at all times inferior in priority to judgments that may be obtained against them in any county through which said road may run, for wages, material, and supplies in running said road; for damages for breaches of contracts of affreightment for injury, loss or destruction of any property put on the cars on said road for transportation, or for any injury to persons or property occasioned in the running of said road.

§ 12. Said trustees shall survey and locate the route of said line of railway, and actually commence the construction thereof, within two years of the passage of this act; and shall continue such construction and complete the work within five years from its commencement, or within such further reasonable period, not exceeding ten years in all, as the governor may grant upon satisfactory evidence that they are progressing with due diligence and in good faith. The gauge of said railway shall be five feet.

§ 13. The charge for transportation on said railway shall not exceed thirty-five cents per hundred pounds on heavy articles, and — cents per cubic foot on articles of measurement for every hundred miles, and four cents a mile for every passenger.

§ 14. The taxes imposed on said line of railway and its appendages shall not exceed the rate imposed on other railroads within the State; provided, however, *that the trustees of the Cincinnati*
35 *Southern Railway Company shall pay into the treasury of this Commonwealth an amount equal to fifty cents per capita for each through passenger across the Commonwealth of Kentucky, and twenty-five cents for each passenger for one hundred miles of travel on said road within the limits of the State of Kentucky; and the said trustees shall also pay semi-annually into the treasury of this Commonwealth, an amount equal to one cent on each one hundred pounds of through freight*

shipped over said road; and all payments due to the treasury under this act shall be made in the manner, and at such times, as may be established by the auditor of public accounts of this State, except the payments required by this act. (Part in italics repealed by acts of March 25, 1872, and February 4, 1873.)

§ 15. The said trustees may sue and be sued, contract and take and hold property, and convey and transfer the same, by the name of the "trustees of the Cincinnati Southern railway." Conveyances by said trustees shall be signed by not less than three of them. They shall keep an office and an agent in the city of Covington, and an agent in every county through which said railway runs, upon whom process of service may be made. Actions against them or against the lessee or lessees of said line of railway, or persons or company operating it, other than those mentioned in sections ninety-three and ninety-four of the Code of Practice in Civil Cases, may be brought in any county in which any part of the said railway lies. When any action is rightly brought in any county, process may be issued to the county in which the office of the trustees is situate, and may be sent and returned by mail. And it is hereby made
36 a condition upon which said trustees construct and maintain said railway within this Commonwealth, that they thereby waive the right to remove any case from any of the courts of this State to any of the courts of the United States, or to bring a suit in any of the courts of the United Staces against any citizen of this State; and a violation of this condition shall operate as a forfeiture of the rights, privileges, and immunities granted in this act.

§ 16. The persons or company operating said railway, or any part thereof, as lessee or otherwise, shall receive and carry all passengers and freight coming or brought to it or them to be carried, and they shall make no discrimination against citizens of Kentucky in carrying freight or passengers on said line of railway, or any part thereof, nor shall they make any unjust discrimination in the favor of through freights or passengers against any way freights or passengers, or against freights and passengers from other railroads connecting with said railway in this State; but they shall charge and receive only the same, and no more, for the same services in transporting freight or passengers going to or coming from one connecting road, that they charge or receive upon those going to or coming from any other. They shall keep an officer and agent at some point along the line within this Commonwealth, and an agent in every county therein through which said railway runs, upon whom service of process may be made; and it is hereby made a condition upon which such persons or company may lease said railway, or any part thereof, or make any arrangement for operating the same that such persons or company thereby waive the right to remove any case from any of the courts of this State to any of the courts of
37 the United States, or to bring a suit in any of the courts of the United States against any citizen of this State; and a violation of such condition shall operate as a forfeiture of all rights acquired under such lease or arrangement; which forfeiture and the

other provisions of this section, this Commonwealth reserves the right to enforce by all necessary remedies and additional legislation.

§ 17. That the rights, privileges and immunities granted by this act, shall continue for and during the period of ninety-nine years, and not longer, and shall, during that time, be subject to be declared forfeited by any court of competent jurisdiction, by an action instituted by the direction of the General Assembly in the name of the Commonwealth, for any failure on the part of the said trustees, their successors or assigns, to comply with the terms, stipulations and obligations imposed herein for the benefit and security of this Commonwealth, or the people thereof; and before entering on any lands in this State, said trustees shall accept the provisions of this act.

§ 18. The following words and expressions in this act shall have the several meanings hereby assigned them, unless there be something in the context repugnant to such construction; that is to say, the word "lands" shall include not only lands and every estate therein, but also easements and franchises connected therewith. The word "trustees" shall mean the trustees for the time being appointed under the said act of the General Assembly of the State of Ohio, and shall include the said board of trustees and their successors. The expression "line of railway and
38 its appendages" shall extend to and include the works and conveniences of said railway, such as officers, stations, shops, sheds, depots, car-houses and other buildings, bridges, viaducts, tunnels, arches, piers, abutments, embankments, approaches, ways, aqueducts, culverts, sewers, drains, wharves yards, fences, telegraph posts and wire, tracks, turnouts, and turn-tables, and the rights of way and lands belonging to said trustees, whereupon the said and other like words and conveniences used in constructing, maintaining or operating said railway are placed. The expression "act of the General Assembly of the State of Ohio" shall mean the act of the General Assembly of the State of Ohio, entitled "An act relating to cities of the first class, having a population exceeding one hundred and fifty thousand inhabitants," passed on the 4th day of May, in the year 1869. The expression "line of railway" shall mean the line of railway between the city of Cincinnati, in the State of Ohio, and the city of Chattanooga, in the State of Tennessee.

§ 19. The General Assembly reserves the right to alter, amend or repeal this act, as provided in an act entitled "An act reserving power to amend or repeal charters and other laws" approved February 14, 1856.

§ 20. Be it further enacted, That this act shall take effect from and after its passage.

Approved February 13, 1872.

P. H. LESLIE, *Governor.*

39 An act to amend an act entitled "An act to authorize the trustees of the Cincinnati Southern railway to acquire the right of way and to extend a line of railway through certain counties in this Commonwealth," approved February thirteenth one thousand eight hundred and seventy-two.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. That so much of the proviso to section fourteen of an act approved February thirteenth, one thousand eight hundred and seventy-two, entitled "An act to authorize the trustees of the Cincinnati Southern railway to acquire the right of way and to extend a line or railway through certain counties in this Commonwealth," as requires the trustees of the Cincinnati Southern railway to pay an amount equal to fifty cents *per capita* for each through passenger, and twenty-five cents for each passenger for one hundred miles, and so much of the proviso to the preamble to said act as requires the said trustees to report the lines surveyed to the citizens of Cincinnati, and to locate the road-bed as indicated by the votes of the citizens and tax-payers of said city, be and the same are hereby repealed.

§ 2. This act shall take effect and be in force from and after its passage.

Approved March 25, 1872.

P. H. LESLIE, *Governor.*

40 An act to amend an act entitled "An act to authorize the trustees of the Cincinnati Southern railroad to acquire the right of way and to extend a line of railway through certain counties of this Commonwealth."

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. That so much of the proviso to section fourteen of an act approved February thirteenth, eighteen hundred and seventy-two, entitled "An act to authorize the trustees of the Cincinnati Southern railroad to acquire the right of way and to extend a line of railway through certain counties in this Commonwealth," as requires the said trustees to pay semi-annual-y into the treasury of this Commonwealth an amount equal to one per cent. on each one hundred pounds of through freight shipped over said road, be and the same is hereby repealed.

§ 2. This act shall be in force from and after its passage.

Approved February 4, 1873.

P. H. LESLIE, *Governor.*

An act to authorize railroads in the State of Kentucky to change their *guage* and adopt any desired *guage*, and to alter the same at pleasure.

§ 1. Be it enacted by the General Assembly of the Commonwealth of Kentucky, That any company owning, controlling or

operating a line or lines of railway in this State may change or alter the guage of same, and adopt and maintain such guage therefor as the authorities of such company may deem expedient.

41 § 2. This act shall take effect from and after its passage.

Approved May 15, 1886.

J. PROCTOR KNOTT, *Governor.*

And on the same day, to wit, on July 25th, A. D. 1900, an entry was made on the journal of said court clothed in words and figures following, to wit:

Journal "H," page 657.

And now, on this day, came the complainant, The Cincinnati, New Orleans & Texas Pacific Railway Company, by George Hoadley, Jr., counsel, and came the defendants, Chas. C. McChord, J. F. Dempsey, and John C. Wood, by Robert J. Breckinridge, attorney general of Kentucky, D. W. Baird, and Lewis McQuown, counsel; and on motion of the said defendants, complainant not objecting thereto, the demurrer to the whole bill, heretofore filed herein by the said defendants, by consent of all parties, was brought on for hearing, and having been argued by counsel, and the court, being advised, considered the said bill to be sufficient and doth adjudge and order that the demurrer thereto be, and the same is, accordingly overruled.

And thereupon the court offered to give and assign time to the said defendants to answer the said bill, but the said defendants, by counsel, declined to answer herein at all and elected to stand by their demurrer.

42 And thereupon this cause, by consent in open court of all parties, presently came on for hearing in chief, and, all parties submitting this cause for final decree, the court doth order that the said bill of complaint be taken as confessed against the said defendants, and doth further adjudge, order, and decree that the said defendants, Chas. C. McChord, J. F. Dempsey, and John C. Wood, railroad commissioners of the State of Kentucky, and their successors in office, as such railroad commissioners of the State of Kentucky, and their agents and servants be, and they are hereby, perpetually enjoined and restrained from entertaining any complaint against complainant, or giving any notice to or conducting any hearing against complainant, or fixing any rates, toll, or compensation which complainant may charge, collect, or receive, or from entering any such rate, toll, or compensation on the record book of their office, or signing the same or mailing any copy thereof to any officer, agent, or employé of the complainant, or from taking any action whatever against or in relation to the complainant under said act of March 10, 1900, entitled "An act to prevent railroad companies or corporations owning and operating a line or lines of railroad and its officers, agents, or employés from charging, collecting, or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the railroad commission in reference thereto, and prescribe the manner of

enforcing the provisions of this act and penalties for the violation of its provisions," approved on the 10th day of March, 1900.

43 And the court doth further order that said defendants shall pay the costs of the complainant herein incurred. The said defendants pray an appeal from the foregoing decree to the Supreme Court of the United States, which is accordingly granted upon the execution by them of a bond, with surety to be approved by the court, in the penal sum of $500, conditioned according to law; and thereupon said defendants presented a bond with David W. Baird as surety thereon, which is approved by the court and ordered to be filed; and then came the complainant and waived service of a citation upon said appeal and consented that no citation thereon should be issued.

And on the same day, to wit, on July 25th, A. D. 1900, came the defendants and filed herein the following petition for appeal, viz:

United States Circuit Court, District of Kentucky.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY Company
vs.
CHARLES C. McCHORD, JAMES F. DEMPSEY, and JOHN C. WOOD.

To the Honorable Walter Evans, district judge and one of the judges of the above-named court, presiding therein:

44 The above-named defendants and appellants, Charles C. McChord, James F. Dempsey, and John C. Wood, in the above-entitled cause, conceiving themselves aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause under date of July 25, 1900, wherein and whereby, among other things, it was and is ordered and decreed that these defendants and appellants be perpetually enjoined from proceeding under a statute of the State of Kentucky approved March 10, 1900, to fix any rate against the complainant and appellee as directed and authorized by said statute, do hereby appeal to the Supreme Court of the United States from said order and decree for the reasons set forth in the assignment of errors, which is filed herewith, and they pray that this their petition for their said appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated July 25, 1900.

KOHN & BAIRD,
ZACK PHELPS,
LEWIS McQUOWN, AND
R. J. BRECKINRIDGE,
Solicitors for Defendants and Appellants.

And on the same day, to wit, on July 25th, A. D. 1900, an entry was made on the journal of said court clothed in words and figures following, to wit:

45 Journal "H," page 658.

The petition on appeal is granted and the claim of appeal therein made is allowed, and the bond is fixed at $500.00; and thereupon came the counsel for the defendants and appellants in this case and presented their appeal bond in the sum of $500.00, which is approved.

And on the same day, to wit, on July 25th, A. D. 1900, the following assignment of errors was filed in the clerk's office of said court, clothed in words and figures following, to wit:

United States Circuit Court, District of Kentucky.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY Company
vs.
CHARLES C. MCCHORD, JAMES F. DEMPSEY, and JOHN C. WOOD.

Come the defendants, Charles C. McChord, James F. Dempsey, and John C. Wood, and file the following assignment of errors upon which they and each of them will rely upon their appeal from the decree made by this honorable court on the 25th day of July, 1900, in the above-entitled cause:

1.

46 That the United States circuit court in and for the district of Kentucky erred in overruling the demurrer interposed by these defendants and appellants to the original bill filed in said cause.

2.

That the said court erred in rendering judgment against these defendants and appellants in said cause upon the pleadings in said cause, and that said judgment is contrary to the law and the facts, as stated in the bill of complaint in said cause.

3.

That the said court erred in rendering a perpetual order of injunction against these defendants and appellants.

4.

That the said court erred in holding that it had jurisdiction of these defendants and appellants upon the subject-matter set forth in the bill of complaint, and before these defendants and appellants had proceeded under said bill to make or establish any rates against the complainant and appellee.

5.

That the said court erred in holding that under the statute of the State of Kentucky complained of these defendants and appellants act as a judicial body or are delegated judicial powers, contrary to the constitution of the State of Kentucky.

6.

That the said court erred in holding that the said statute complained of deproved the complainant and appellee of its
47 property without due process of law or denies to the complainant and appellee the equal protection of the law, as guaranteed by the fourteenth amendment of the Constitution of the United States.

7.

That the said court erred in holding that the said statute complained of attempted to regulate interstate commerce and is in violation of article 1, § 8, of the Constitution of the United States.

8.

That the said court erred in holding that the said statute complained of is void and unconstitutional because it does not provide a judicial hearing for the complainant and appellee with reference to the rates to be fixed thereunder or after said rates shall have been fixed.

9.

That the said court erred in holding that the said statute complained of is void because it does not provide that the rates which shall be fixed thereunder shall apply to all railroads in the State of Kentucky, and that because of said failure the said statute denies to the complainant and appellee the equal protection of the law.

10.

That the said court erred in holding that the complainant and appellee under its charter has a contract with the State of Kentucky whereby its rates have been fixed, and that the statute complained of violates its said contract, as forbidden by article 1, § 10,
48 of the Constitution of the United States.

Wherefore the said defendants and appellants on appeal pray that the judgment of said court be reversed.

KOHN & BAIRD,
R. J. BRECKINRIDGE,
ZACK PHELPS, AND
LEWIS McQUOWN,
Counsel for Defendants.

And on the same day, to wit, on July 25th, A. D. 1900, a bond was filed in the clerk's office of said court, which was and is in words and figures following, to wit:

Circuit Court of the United States, District of Kentucky.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY Company
vs.
C. C. McCHORD, J. F. DEMPSEY, and JOHN C. WOOD.

Know all men by these presents that we, C. C. McChord, J. F. Dempsey, and John C. Wood, and David W. Baird, are held and firmly bound unto the Cincinnati, New Orleans & Texas Pacific Railway Company in the sum of five hundred dollars, to be paid to the said Cincinnati, New Orleans & Texas Pacific Railway Company, executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally,
49 and our and each of our heirs, executors, and administrators, firmly *in* these presents.

Sealed with our seals and dated this 25th day of July, A. D. 1900.

Whereas the above named C. C. McChord, J. F. Dempsey, and John C. Wood hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Covington:

Now, therefore, the condition of this obligation is such that if the above-named C. C. McChord, J. F. Dempsey, and John C. *Baird* shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. C. McCHORD,
J. F. DEMPSEY,
JOHN C. WOOD,
By LEWIS McQUOWN, *Att'y.*
DAVID W. BAIRD.

Sealed and delivered in presence of—
HENRY CASSIN,
Deputy Clerk U. S. Courts.

Approved July 25th, 1900.

WALTER EVANS.

50 UNITED STATES OF AMERICA, } ss:
District of Kentucky, }

I, Jos. C. Finnell, clerk of the circuit court of the United States for the sixth judicial circuit and district of Kentucky, at Covington, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the cause set out in the caption hereto, as the same appears of record and on file in the clerk's office of said court.

Seal 6th Circuit Court, Ky. Dis., U. S. of America.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Covington, Kentucky, this 28th day of July, 1900.

JOS. C. FINNELL, *Clerk.*

{Ten-cent U. S. internal-revenue stamp, canceled 7, 28, 1900. J. C. S., clerk.}

Endorsed on cover: File No., 17,885. Kentucky C. C. U. S. Term No., 400. Charles C. McChord, James F. Dempsey, and John C. Wood, appellants, *vs.* The Cincinnati, New Orleans & Texas Pacific Railway Company. Filed August 21st, 1900.